§ 690.77 Initial disbursement of a Pell Grant in an award year without a valid SAR.

(a) * * *

(3)(i) Receives a PGI from the Secretary; or

(ii) Receives the PGI produced by the Secretary from an organization that has a contract to transmit application data to the Secretary.

(b) If an institution receives a student's application information and his or her PGI from the Secretary, or his or her PGI produced by the Secretary from an organization that has a contract to transmit application data to the Secretary, but the institution has documentation that indicates that the application information is inaccurate, the institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution—

* * * * *

14. Section 690.78 is amended by revising paragraph (d)(3) to read as follows:

§ 690.78 Method of disbursement—by check or credit to a student's account.

* * * * *

(d) * * *

(3) If the student has not picked up his or her payment at the end of the 15-day period, the institution may credit the student's account only for any outstanding charges for tuition and fees and room and board for the award year incurred by the student while he or she was eligible.

* * * * *

15. Section 690.79 is amended by revising paragraph (c) to read as follows:

§ 690.79 Recovery of overpayments.

* * * * *

(c) If an institution refers a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible for further title IV, HEA program assistance for attendance at any institution until the student repays the overpayment or the Secretary determines the overpayment has been resolved.

* * * * *

16. In § 690.83, paragraph (a) is amended by removing the words "Payment Documents" and "December 31" and adding in their place, respectively, the words "Payment Vouchers" and "September 30"; and by adding new paragraphs (c) and (d) and revising the authority citation to read as follows:

§ 690.83 Submission of reports.

* * * * *

(c) An institution shall submit to the Secretary a SAR Payment Voucher (or the equivalent as defined by the Secretary) for each student whose Pell Grant award has changed as a result of a change in enrollment status, a change in the cost of attendance, or a change in the student's eligibility in the next reporting period established by the Secretary through publication of a notice in the **Federal Register**.

(d) In accordance with 34 CFR 668.84 the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a), (b) or (c) of this section.

(Authority: 20 U.S.C. 1070a, 1094)

§ 690.84 [Removed]

17. Section 690.84 is removed.

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Part III

Department of the Interior

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes definitions, standards, procedures and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, that are recovered in conjunction with Federal projects and programs under certain Federal statutes. This action should ensure that federally-owned and administered collections of prehistoric and historic material remains, and associated records, are deposited in repositories that have the capability to provide adequate long-term curatorial services. Issuance of this rule fulfills the Secretary of the Interior's obligations under the National Historic Preservation Act of 1966 and the Archaeological Resources Protection Act of 1979 to issue such regulations.

EFFECTIVE DATES: Copies of this final rule have been transmitted to the Committee on Energy and Natural Resources of the U.S. Senate and to the Committee on Interior and Insular Affairs of the U.S. House of Representatives. This final rule will take effect on October 12, 1990.

FOR FURTHER INFORMATION CONTACT: Michele C. Aubry (Departmental Counsulting Archeologist's office) at 202–343–1876 or FTS 343–1876, or Francis P. McManamom (Chief, Archeological Assistance Division) at 202–343–4101 or FTS 343–4101.

SUPPLEMENTARY INFORMATION:

Background

This final rule being issued under the authority of section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470*a*) and section 5 of the Archeological Resources Protection Act (16 U.S.C. 470*dd*). The National Historic Preservation (NHPA) directs the Secretary of the Department of the Interior to issue regulations ensuring that significant prehistoric and historic artifacts, and associated records, recovered under section 110 of the NHPA (16 U.S.C. 470*h*–2), the Reservoir Salvage Act [1] (16 U.S.C. 469–469*c*), and the Archeological Resources protection Act (16 U.S.C. 470*aa-mm*) are deposited in an institution with adequate long-term curatorial capability.

The Archeological Resources Protection Act (ARPA) authorizes the Secretary to issue regulations providing or the exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archeological resources removed from public and Indian lands pursuant to ARPA. In addition, the regulations are to provide for the ultimate disposition of such resources and other resources removed under the Reservoir Salvage Act or the Antiquities Act (16 U.S.C. 431–433). Any exchange or ultimate disposition of resources that are excavated or recovered from Indian lands are subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over the said lands.

Preparation of the Rulemaking

On October 11, 1985, the National Park Service published a notice of intent to propose the rulemaking and a request for comments in the **Federal Register** (50 FR 41527). Thirty-seven commenters submitted ideas and suggestions that were considered and included, as appropriate, in development of the proposed rule. All commenters were supportive of the proposed regulation and the topics identified in the notice of intent.

In an effort to provide affected parties with an opportunity to provide comments during the early stages of regulatory development, on September 26, 1986, the National Park Service distributed a draft of the proposed regulation to a wide range of interested parties. Copies of the draft were sent to State and Federal agencies, national professional archeological and museum organizations, national Native American organizations, and numerous public and private repositories across the nation.

Fifty-six agencies, organizations, repositories, businesses and individuals submitted comments. As is generally the case, the comments received on this early draft were not summarized in the preamble to the proposed rule that subsequently was published in 1987. However, all comments on the draft were considered and most contributed substantially to the rulemaking process.

The proposed rule (36 CFR part 79) for the curation of federally-owned and administered archeological collections was published in the **Federal Register** on August 28, 1987 (52 FR 32740). Public comment was invited for a 60-day period, ending on October 27, 1987. Copies of the proposed rule were distributed to Federal and State agency Historic Preservation Officers; Federal and State agency chief archeologists; the chairmen of Indian tribes, Alaska Native villages and corporations recognized by the Secretary of the Interior; national professional archeological and museum organizations; national Native American organizations; Native American museums located in the United States that are listed in the "Native American Directory," published by the National Native American Co-operative; museums listed in the "Guide to Departments of Anthropology," published by the American Anthropological Association; and repositories listed in ARPA permits that were issued by the National Park Service in 1984 and 1985.

Written comments were received from 41 sources, including 10 from Federal agencies, eight from museums, seven from Indian tribes, seven from State agencies, five from professional scholarly and conservation associations, and one each from a national Native American organization, an electric company association, an oil company and an individual.

Comments were addressed to all of the 10 sections and two appendices of the proposed rule. Comments ranged from as few as three to as many as 83 on a given section. Sections 79.8 and 79.4 drew the greatest volume of comments, receiving 83 and 80 comments, respectively. Sections 79.6, 79.5, 79.3, 79.7 and 79.9 drew the next largest number of comments, receiving 65, 58, 43, 27, and 26 comments, in that order. No other section drew more than 16 comments.

All comments were fully considered when revising the proposed rule for publication as a final rulemaking. In addition, the findings, conclusions and recommendations of the General Accounting Office (GAO), as reflected in its report entitled "Cultural Resources: Problems Protecting and Preserving Federal Archeological Resources" (GAO/RCED–88–3; Dec. 1987), were considered.[2]

[1] The Reservoir Salvage Act (Pub . L. 86–523, June 27, 1960) was amended by the Archeological and Historic Preservation Act (Pub. L. 93–291, May 24, 1974). The amendment expanded application of the Act beyond Federal reservoir projects to include any Federal construction project or federally licensed or funded activity or program. The Act was futher amended by Public Law 95–625 (Nov. 10, 1978). This amendment extended the Act's funding authorities. The amended Act sometimes is referred to as the Archeological Recovery Act or the Moss-Bennett Act. Both titles are merely descriptive names, and are not official short titles.

[2] The purposes of the study were to determine (1) To what extent archeological resources on public

Continued

Valid concerns were addressed to the extent of the National Park Service's legal authorities. Some suggestions were not included because they either were beyond the scope of this regulation or were inconsistent with Federal historic preservation and property management statutes and regulations. Some comments pointed out vague and unclear language so clarifying and explanatory language was added to the rule and the preamble.

Given the volume of comments, it is impractical to respond in detail in the preamble to every question raised or suggestion offered. Some commenters ponted out errors in spelling, syntax and minor technical matters. Those errors have been corrected, and are not mentioned further in the preamble. In addition, many commenters made similar suggestions or criticisms, or repeated the same suggestion on different sections of the proposed rule. In the interest of reducing unnecessary paperwork, comments that are similar in nature have been grouped and are discussed in the most relevant section in the preamble.

Changes in Response to Public Comments

One commenter felt that the rule did not consistently or clearly differentiate those sections or paragraphs that are mandatory from those that are discretionary. In response, the word "shall" is used throughout the rule to indicate which are mandatory; the word "should" is used to indicate which are discretionary. Where appropriate, headings have been added within the sections of the rule to identify whether the paragraphs that follow are standards, guidelines or procedures.

Section 79.1 Purpose

This section received relatively few comments. In response to one commenter's suggestion, the order of the items listed in paragraphs (a) and (b) in this section has been changed to reflect the sequence in which the respective sections and appendices appear in the rule.

One commenter asked that this section mention repatriation of sacred materials to Indians as a form of disposition. In addition, the commenter asked that this section mention that Indians can impose conditions on the treatment of collections that are removed from Indian lands. The commenter also asked that reference be made to provisions for agreements between the U.S. and Indian Governments regarding the recovery, return and treatment of collections.

This section presents the purpose of the rule in a general manner. It is not meant to include references to particular methods of disposition or to procedures for determining the disposition of a collection. Specific language regarding those matters is included in appropriate sections of the rule. Thus, the suggestions have not been incorporated.

Another commenter pointed out that most repositories have standard short-term loan forms, and asked if the sample short-term loan form contained in appendix A to the proposed rule had to be used. A new paragraph (b)(5) has been added to this section to clarify that preexisting forms that are consistent with this regulation may be used in lieu of developing new ones.

One commenter suggested adding an example of a form that could be used when a non-Federal party who holds title to material remains recovered in connection with a Federal project donates those remains to the Federal agency. In response, a new appendix (renumbered App A) has been added to present an example of a deed of gift.

Section 79.2 Authority

This section received relatively little comment, and stands as proposed with only minor rewording.

One commenter suggested that use of the term "significant" in paragraph (a) of this section was inappropriate and misleading in that it inaccurately implies that the rule applies only to collections that are recovered from archeological resources that meet the criteria for listing on the National Register of Historic Places. The language in paragraph (a) is drawn from section 101(a)(7)(A) of NHPA, which directs the Secretary of the Interior to promulgate this regulation. Because the term "significant" is used in the authorizing legislation, it has been retained in paragraph (a). Section 79.3 of this rule clarifies which collections are subject to this part (i.e., the rule applies to collections recovered under the authority of certain statutes, notwithstanding the eligibility of the excavated resource for listing in the National Register of Historic Places).

One commenter recommended revising the language in paragraph (b) of this section to track the language contained in section 5 of ARPA. The paragraph has been changed accordingly.

Another commenter asked that the term "Indian owner" be used in paragraph (b) of this section and in other sections of the rule rather than the phrase "Indian or Indian tribe that owns or has jurisdiction over such lands." This suggestion has not been adopted because it is not in keeping with the language contained in section 5 of ARPA.

The same commenter asked that a new paragraph be added to this section that would refer to the American Indian Religious Freedom Act (42 U.S.C. 1996) and the First Amendment of the Constitution of the United States, and state that the statutory policies that the rule is meant to implement must sometimes yield to constitutionally protected interests. This suggestion has not been adopted because this section is meant to reference only those authorities that authorize the Secretary of the Interior to promulgate this rulemaking.

Section 79.3 Applicability

Paragraph (a) of this section states that this rulemaking applies to collections that are excavated or removed under the authority of the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. One commenter suggested that the rule be expanded to apply to collections recovered pursuant to the National Environmental Policy Act (42 U.S.C. 4341). This suggestion has not been adopted because that Act is not among the authorities listed in section 101(a)(7)(A) o NHPA and section 5 of ARPA under which collections subject to this rulemaking are excavated or removed.

However, most Federal and federally authorized surveys, excavations and other studies of prehistoric and historic resources conducted pursuant to the National Environmental Policy Act also generally are conducted under one or more of the authorities listed in section 101(a)(7)(A) of NHPA and section 5 of ARPA. That is, most studies on public lands are conducted under ARPA or the Antiquities Act. In addition, most surveys to identify and evaluate resources are conducted under NHPA, while most excavations to mitigate the effects of a Federal project ae conducted under NHPA and the Reservoir Salvage Act. In fact, rarely are surveys and excavations conducted or authorized by

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lands are being looted for artifacts, (2) what Federal land managing agencies are doing to protect archeological resources on their lands from looting, and (3) whether the artifacts that were recovered from public lands between 1980 and 1985 are being properly preserved. Although the problems are nationwide in scope and involve all major Federal land management agencies, the GAO limited its examination to Arizona, Colorado, New Mexico, and Utah, and to the three major Federal land managing agencies in that area (i.e., the Bureau of Land Management, the Forest Service and the National Park Service).

a Federal agency under authorities other than the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. For all practical purposes, this rulemaking applies to most collections generated as a result of a Federal action, assistance, license, or permit.

One commenter recommended that the rule be expanded to apply to paleontological collections recovered in connection with a Federal or federally authorized activity. Another commenter recommended that the rule be expanded to apply to ethnographic collections. As previously mentioned, this rulemaking applies to collections excavated or removed under the authority of the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. Any paleontological and ethnographic collections recovered under one of those authorities are subject to this part; otherwise, the rule does not apply.

However, this does not relieve Federal agencies of responsibilities they have under other Federal statutes and regulations to preserve and protect other kinds of federally-owned property, including museum collections, not subject to this rule. The Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), and several agency-specific statutes and regulations direct Federal agencies to manage and protect such collections. In carrying out these responsibilities, Federal agencies are encouraged to apply and adapt the standards, procedures and guidelines established in this rulemaking to other kinds of collections under their jurisdiction.

Paragraph (a)(1) of this section states that material remains generally are the property of the landowner. Several commenters asked for further clarification on the ownership of material remains excavated or removed under the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. For example, some commenters felt that material remains from public lands that once were included in the aboriginal territory of an Indian tribe belong to that tribe rather than to the U.S. Government. Others said that material remains from Indian allotted lands may be the communal property of the Indian tribe that has jurisdiction over such lands rather than the personal property of the individual Indian landowner. The commenters said that, when a question exists, ownership should be determined according to tribal laws, traditions and customs.

Further clarification has not been provided for several reasons. First, common law concerning abandoned, lost and unclaimed property in the United States has been well developed by the courts. Second, property rights concerning archeological resources on public and Indian lands are specified in section 4(b)(3) of ARPA and in § .13 of ARPA's uniform regulations (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229). Third, it is beyond the scope of this rulemaking to determine rights of ownership on Indian lands.

Several commenters recommended that Federal agencies endeavor to acquire title to material remains that are excavated or removed from non-public lands. Another commenter asked for clarification on a Federal agency's responsibilities when title to the lands from which a collection is excavated or removed changes. We agree in principle that the Federal Agency Official should seek title to material remains that are recovered from non-public lands pursuant to one of the agency's projects or programs, particularly when the lands are to be subsequently acquired by the Federal agency, or when the owner does not have the capability or the desire to provide long-term curatorial services. However, this is beyond the scope of this rulemaking.

Several commenters asked that the rulemaking clarify who owns the data that are generated as a result of a Federal or federally authorized archeological study. A new paragraph (a)(2) has been added to this section to clarify this.

Several commenters asked if preexisting collections, meaning those collections that are placed in repositories prior to the effective date of this regulation, are subject to this rulemaking. Neither the NHPA nor ARPA, which authorize this rulemaking, provides an exemption for preexisting collections. It is important to note that Federal land managing agencies have been responsible since 1906, when the Antiquities Act was passed, for the long-term management and preservation of collections recovered from lands owned or controlled by the U.S. Government. Other Federal historic preservation and property management statutes, enacted between the 1930s and the 1970s, reaffirmed these responsibilities and expanded their application to non-land managing agencies.

The GAO discusses these statutory responsibilities and the adequacy of curation of preexisting, federally-owned collections in its report entitled "Cultural Resources: Problems Protecting and Preserving Federal Archeological Resources" (GAO/RCED-88-3, Dec. 1987). The GAO found that Federal agencies generally were doing little to ensure that the artifacts removed from their lands in the past and sent to curatorial facilities were accounted for and being properly preserved. The GAO recommended prompt issuance of this rulemaking to ensure that the artifacts are properly preserved.

It is beyond the scope of this rulemaking either to change statutory responsibilities of Federal agencies to preserve collections or to authorize a lesser level of care for preexisting collections. Accordingly, a new paragraph (b) clarifies that the rule applies to preexisting and new collections that meet the requirements of paragraph (a) of this section. In addition, paragraph (a) in § 79.5 of the final rulemaking establishes procedures to ensure that preexisting collections are properly managed and preserved.

Another commenter asked whether this rulemaking would cause Federal agencies to breach or modify material terms and conditions contained in any contract, grant, license, permit, memorandum, or agreement entered into by or on behalf of a Federal agency before or after the effective date of this regulation. The commenter was concerned in particular about instances where a Federal agency may require a non-Federal party such as an oil company, public utility or private developer to secure long-term curatorial services on behalf of the U.S. Government, and the actual curatorial arrangement is between the non-Federal party and the repository.

While the requirements contained in this rulemaking must be reflected in future contracts, grants, licenses, permits, memoranda, and agreements, it is not the intent of this regulation to affect material terms and conditions contained in ones entered into prior to the effective date of this regulation. Paragraph (b) clarifies that Federal agencies are not to apply these regulations in a manner that would supersede or breach material terms and conditions contained in contracts, grants, licenses, permits, memoranda, or agreements entered into by or on behalf of a Federal agency prior to the effective date of this regulation.

In a related matter, several commenters asked whether this rulemaking would alter the terms and conditions contained in Antiquities Act permits or ARPA permits for preexisting collections. This rulemaking does not change those terms and conditions. New paragraphs (c) and (d) clarify that collections excavated or removed pursuant to the Antiquities Act or ARPA remain subject to the relevant Act, its implementing regulations, and the terms

and conditions of the pertinent permit or other approval.

New paragraph (e) states that any repository that is providing curatorial services for a collection subject to the regulations in this part must possess the capability to provide adequate long-term curatorial services, as set forth in this rule, to safeguard and preserve the associated records and any material remains deposited in the repository. Since preexisting collections are not exempt from this rulemaking, this applies equally to repositories that agree after the effective date of this regulation to preserve collections, as well as to repositories that agreed prior to the effective date of this regulation to preserve collections. If a repository's officials decide that they can no longer meet their obligations to provide adequate long-term curatorial services under the pertinent contract, grant, license, permit (including Antiquities Act permits and Archaeological Resources Protection Act permits), memorandum, or agreement, those officials must realize that such a decision on their part may negatively affect the repository's present and future standing to house collections subject to the regulations in this part.

Several commenters asked for clarification on when the rulemaking does not apply. As previously indicated, the rule does not apply to collections that are excavated or removed under authorities other than those listed in paragraph(a).

A number of commenters recommended that human remains and funerary objects be exempt from this rulemaking, and be repatriated and reburied. This recommendation was beyond the scope of this rulemaking since section 3(l) of ARPA specifies that graves, human skeletal materials, or any portion or piece thereof are an archeological resource when they are at least 100 years of age and of archeological interest, as determined under ARPA's uniform regulations.

However, alternatives exist for forms of disposition other than retention in a repository. For example, terms and conditions stipulated in Antiquities Act permits and ARPA permits may specify how human remains and funerary objects are treated. In addition, the Federal Agency Official may determine, in accordance with ARPA's implementing regulations, that they are not or are no longer of archeological interest, thereby making them not subject to this rulemaking.

Section 79.4 Definitions

This section received the second largest number of comments. Many comments were submitted on the term "archeological resource," which was a slightly modified version of the definition for the same term of ARPA's implementing regulations. Commenters pointed out that a variety of terms and definitions are used in other applicable statutes to describe the same kinds of resources, and that using one such term and definition incorrectly implies that the others are not applicable.

Specifically, the term "archeological resource" is defined in section 3(l) of ARPA to mean any material remains of past human life or activities that are at least 100 years of age and of archeological interest, as determined under ARPA's uniform regulations. Section 301(5) of NHPA defines the term "historic property" or "historic resource" to mean any prehistoric or historic district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places. Such properties or resources typically, but not always, are 50 years or older in age. The Antiquities Act uses, but does not define, the term "historic or prehistoric ruin or monument or object of antiquity." Federal land managing agencies generally interpret the term to mean prehistoric and historic resources that are 50 years or older in age. The Reservoir Salvage Act uses, but does not define, the term "significant scientific, prehistorical, historical, or archeological data." The term generally is interpreted to mean prehistoric and historic resources that meet the criteria for evaluation for inclusion of the National Register of Historic Places.

While the definitions for these various terms differ, with few exceptions, the collections of material remains and associated records that are generated pursuant to each of the cited statutes are subject to this final rulemaking. The subject of this rulemaking is the collection, not the resource from which the collection is excavated or removed. Thus, to eliminate possible confusion and misapplication of this rulemaking, the definition for the term "archeological resource" has been deleted. When reference to the resource from which the collection is excavated or removed is needed, the terms "prehistoric or historic resource" and "site" are used, but are not defined. The decision was made to rely on common meanings and dictionary definitions rather than attempt to define the terms, given the variety of statutory definitions.

A few commenters recommended revising the definitions for the terms "of archeological interest," "Indian lands," "Indian tribe" and "public lands." These terms are defined in ARPA and its uniform regulations; thus, it is beyond the scope of this rulemaking to alter them. Instead, "Indian lands," "Indian tribe" and "public lands" have been defined by cross-referencing the existing regulatory definitions. The term "of archeological interest" has been deleted.

A number of commenters felt that it is inappropriate to include human remains within the definition for "material remains," and recommended that it be deleted. The recommendation is beyond the scope of this rulemaking because section 3(l) of ARPA defines an archeological resource to include human remains that are at least 100 years of age and of archeological interest, as determined under ARPA's uniform regulations.

Some commenters recommended that the final rule indicate that human remains and funerary objects are presumed to be sacred objects, and that material remains directly associated with human remains be identified as grave goods within the definition for "material remains." It is beyond the scope of this rulemaking to predetermine the religious or sacred importance that an Indian tribe or other group may ascribe to particular object. Such determinations are made by the Federal Agency Official in consultation with appropriate Indian tribes or other groups. This has been so indicated in the revised definition for "religious remains."

A separate listing for grave goods has not been added to the definition for "material remains" because material remains that are found in direct association with human remains ordinarily consist of artifacts of human manufacture and natural objects used by humans, both of which already are listed under the definition.

Consistent with section 3(l) of ARPA and § –.3(a)(4) of ARPA's uniform regulations, the definition for "material remains" has been revised to clarify that it includes paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

One commenter recommended that the definition for "associated records" be revised to exclude copies of public or archival records that are studied and duplicated as a result of historical research. The commenter felt it is unnecessary to maintain duplicate copies of original records that are permanently maintained elsewhere. This recommendation has not been incorporated because copies of such records that are essential to understanding the resource should be maintained as a part of the collection.

Moreover, it is desirable to maintain copies of original public and archival records in case the originals are stolen, lost, damaged or destroyed. Paragraphs (a)(2)(iii) and (a)(2)(iv) of this section have been revised accordingly.

One commenter suggested expanding the definition for "associated records" to include copies of administrative records that are related to the survey, excavation and other study of the resource. The commenter felt that it is important for copies of research proposals, contracts for archeological services, antiquities permits and other administrative records to be maintained as a part of the collection. This has been added in a new paragraph (a)(2)(v).

One commenter suggested revising the definition for "associated records" to require that paper printouts be made of computerized records. The commenter felt that paper printouts would serve as a backup in the event that researchers cannot easily or inexpensively access computerized records. Given the rapidity in which computer technology changes, we agree that paper printouts, on acid free paper, of computerized records should be maintained. However, it is beyond the scope of this rulemaking to stipulate in what medium records should be generated. The purpose of this rule is to ensure that whatever records are generated are properly managed and cared for as a part of the collection.

In response to the few comments received on the definition for the term "curation," minor technical revisions have been made. In addition, the term itself has been changed to "curatorial services."

Two comments were received on the definition for the term "Federal Agency Official." One commenter felt that the words "officially designated to represent the * * * agency" would be interpreted to mean that the designation must be in writing. The commenter felt that representation ordinarily is based on the duties and responsibilities assigned to the position held by the person rather than on a written designation from the secretary of the department or the head of the agency. The definition has been revised to accommodate the commenter's concern.

Another commenter recommended revising the definition for "Federal Agency Official" to clarify that the rulemaking applies only to departments, agencies or instrumentalities of the United States that have authority over collections that are subject to this part. The definition has been revised accordingly.

A number of comments were received on the definition for "professional qualifications," which has been changed to "qualified museum professional." One commenter felt that the rule represented a bias toward archeology, which may not be appropriate in a museum setting. The commenter recommended that training in museum science be mentioned since archeological training alone is not sufficient to qualify a person for collection management positions. One commenter recommended that the definition refer to the Office of Personnel Management's (OPM) "Qualifications Standards for Positions under the General Schedule (Handbook X–118)" (U.S. Government Printing Office, stock No. 906–030–00000–4 (1986)), which establish educational, experience and training requirements for employment with the Federal Government. Another commenter recommended that the definition specify the relevant occupational series, presumbly meaning those contained in OPM's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906–028–00000–0 (1981)). Three commenters recommended that the definition refer to the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983), which contain professional qualification standards that are significantly higher than the entry level qualification standards established by OPM. Commenters generally expressed concern that the highest reasonable standards be specified to assure that collections are not lost through improper handling, treatment or storage.

In response to the comments, the definition for "qualified museum professional" has been revised to mean a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under his or her care, and commensurate with the person's duties and responsibilities. Examples of standards that may be used for classifying positions and for evaluating a person's qualifications are listed, including those that have been issued by OPM and the Secretary of the Interior.

Another commenter recommended that the definition for "qualified professional" be expanded to recognize the expertise of individual Indians in administering collections. The commenter noted that such expertise may have been gained through experience or because the Indian individual is recognized by the Indian tribe as an elder.

There is no question that Indian tribal elders and religious leaders have expertise in the management, care and use of material remains that have traditionally been considered of religious or sacred importance by their respective tribes. This expertise is acknowledged in § 79.6(c) of the final rule, which lists Indian tribal elders and religious leaders, the Tribal Historic Preservation Officer, and professionals in Indian tribal museums as sources for technical assistance. In addition, at various points throughout the rule, the Federal Agency Official is encouraged to consult with these experts.

The definition for "religious or sacred object," which has been changed to "religious remains," has been revised to accommodate suggestions that material remains should be considered to be of religious or sacred importance when they traditionally have been so considered by an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

Three commenters noted that the definition for the term "repository" should be revised to include facilities that are operated by Indian tribes. This has been added.

Another commenter felt that the definition for the term "repository" implies that a particular kind of repository must be used, thereby in undue interference with the private sector. We disagree. The definition states that a repository must be able to provide professional, systematic and accountable curatorial services on a long-term basis. The examples provided (i.e., a facility managed by a university, college, museum or other educational or scientific institution) are taken directly from the Antiquities Act and ARPA. The definition does not exclude a private sector repository that can provide professional, systematic and accountable curatorial services on a long-term basis.

Another commenter felt that the definition for the term "repository" implies that a repository could use consultants in lieu of hiring its own staff. The commenter felt that using only consultants would lead to inadequate care of the collections. Certainly, a repository must have some staff to be able to provide professional, systematic and accountable curatorial services on a long-term basis. However, it also is appropriate for a repository to use consultants from other institutions to provide technical advice, particularly on

non-routine matters such as the conservation of a unique or fragile object. The use of consultants probably would be more prevalent in smaller sized repositories where it is less likely to be cost effective to have a cadre of specialists on staff. The ambiguous language in the definition has been deleted. The commenter's concern is addressed in § 79.9(b)(4) in the final rule.

Two new definitions have been added to the final rule. First, the term "personal property" has been added. The term is defined by cross-referencing the definition contained in 41 CFR part 101–43 on the utilization of personal property. Section 101–43.001–14 of title 41 defined "personal property" to include property of any kind or interest therein, except real property, records of the Federal Government, and certain categories of naval vessels. Collections, equipment (e.g., a specimen cabinet or an exhibit case), materials, and supplies are classes of Federal personal property. Materials and supplies usually are considered to be expendable personal property, while collections and equipment are considered to be accountable personnel property.

Second, the term "Repository Official" has been added. The definition is comparable to the definitions for "Federal Agency Official" and "Tribal Official."

Two commenters asked that a definition be provided for the term "federally-owned or administered." The decision was made to leave the term undefined because § 79.3(a) of this rule clarifies which collections are subject to the rulemaking.

One commenter asked that definitions be provided for the terms "object" and "lot." The decision was made to leave the terms undefined, relying instead on common meanings or dictionary definitions.

Section 79.5 Minimum Capability Requirements for Repositories (Renumbered § 79.9; Retitled "Standards To Determine When a Repository Possesses the Capability To Provide Adequate Long-term Curatorial Services")

This section has been revised to clarify the standards that a repository must meet in order for Federal Agency Official to determine that the repository possesses the capability to provide adequate long-term curatorial services. Paragraphs (a) and (b) in this section of the proposed rule have been deleted because the topics are addressed in other sections of the final rule (i.e., in §§ 79.5 and 79.6). Paragraph (c) in this section of the proposed rule has been divided into two new §§ 79.9 (a) and (b) in the final rulemaking. In addition, paragraphs (c)(1) through (c)(10) in this section of the proposed rule have been slightly reworded, consolidated to accommodate public comments, and reordered. They appear as §§ 79.9 (b)(1) through (b)(9) in the final rule.

One commenter suggested that the Federal Agency Official review and approve a repository's facilities, written curatorial policies and operating procedures. This suggestion has not been adopted because it is beyond the scope of this rulemaking to establish a certification program that would result in a list of federally approved repositories. Moreover, a repository may possess the capability to provide long-term curatorial services for one kind of collection but not another, depending on the nature and content of the collections. Thus, Federal agencies should not presume that a repository that maintains some collections on behalf of the Federal Government is capable of maintaining their particular collections.

One commenter felt that requiring a repository to "substantially comply" with the activities listed under paragraph (b) in the final rule was inadequate guidance, although the commenter did not offer an alternative suggestion. Several other commenters pointed out that the activities required for each collection would differ according to the nature and content of the collection. For example, a collection comprised primarily of lithic materials would require less stringent environmental controls than would a collection comprised primarily of basketry. It would follow that, all else being equal, a repository that lacks a central heating and air conditioning system would possess the capability to provide adequate long-term curatorial services for the former, but not the latter, collection. In response to these concerns, the paragraph has been revised to state that a repository would have to comply with the activities listed, as appropriate to the nature and content of the collection.

One commenter asked whether the intent of paragraph (b)(1)(iv) in the final rule is to require a repository to photograph all collections. This is not the intent of that paragraph. The purpose of paragraph (b) is to assure that a repository has the capability to perform certain activities such as maintaining photographs that are a part of a collection. Any requirements (e.g., photographing a collection) that a Federal agency might want to place on a repository would be identified in the contract, memorandum or agreement between that agency and the repository for curatorial services.

One commenter felt that it would be unreasonable and costly to require a repository to have an adequate emergency management plan for responding to man-made and natural disasters. We disagree. It is standard operating practice, or should be, for repositories to have such plans. The requirement has been retained, and appears in § 79.9(b)(3)(iv) of the final rule.

Paragraph (b)(5) of the final rule has been revised and expanded to indicate that a collection is to be handled, stored, cleaned, conserved and exhibited in a manner that is appropriate to the nature of the material remains and associated records, and in a manner that preserves data that may be studied in future laboratory analyses. It also acknowledges that, when material remains in a collection are to be treated with chemical solutions or preservatives that will premanently alter the remains, it may not always be possible to retain untreated representative samples of each affected category.

One commenter felt that the Federal Agency Official should approve all proposed treatments before they are performed. This suggestion has not been incorporated into the final rule because any restrictions on treatments, especially routine ones, are to be specified in the contract, memorandum or agreement for curatorial services.

Several commenters asked whether a repository had to store the associated records that are listed in paragraph (b)(6) in the final rule according to one or more of the methods listed. The paragraph has been revised to clarify that the methods listed are merely examples of methods that would protect the records from theft and fire. Other methods not identified in the rulemaking that would accomplish the goal of protecting records from theft and fire would be appropriate as well.

At the request of several commenters, paragraph (b)(6)(iii) in the final rule has been revised and expanded to list other parties that frequently maintain records. Additions include the State museum or university, the Tribal Historic Preservation Officer, the National Technical Information Service and the Defense Technical Information Service.

One commenter suggested revising paragraphs (b)(7) and (b)(8) in the final rule to specify the frequency in which inspections and inventories are to be conducted. This suggestion has not been adopted because the frequency of inspections and inventories is addressed in § 79.11 of the final rule.

A number of commenters pointed out that many repositories that currently house and care for preexisting collections do not possess the capability to provide adequate long-term curatorial services, as specified in this section. Commenters said that increased funding would be required for many of those deficient repositories to meet the requirements of this rulemaking. Some commenters suggested adding a new section that addresses preexisting collections and provides a means for Federal agencies to assist deficient repositories.

We agree that many repositories, including some that are owned and operated by the U.S. Government, do not meet the requirements of this rulemaking. This is to be expected because, in the absence of a governmentwide regulation such as this, Federal agencies and repositories have developed and used different standards, guidelines, policies, procedures, and manuals.

The purpose of this rulemaking is to establish one set of standards that will ensure that collections subject to this part are properly managed and preserved. Preexisting collections are not to receive a lesser standard of care than new collections. The commenters' concerns have been addressed in §§ 79.5 and 79.7 of this final rule. Specifically, § 79.5(a) calls for the Federal Agency Official to evaluate the curatorial services being provided to preexisting collections, and to take certain actions when the services are not adequate. Sections 79.7 (a)(5) and (a)(6) clarify that such activities may be funded by Federal agencies.

Section 79.6 Use of Collections (Renumbered § 79.10)

One commenter felt that Federal agencies have an obligation to make publicly owned or administered collections available for legitimate study and use. We agree. This section has been revised to say that Federal agencies shall ensure that collections are made available for scientific, educational and religious uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection.

Several commenters asked who should review and respond to requests to use a collection, the Federal agency or the repository? One commenter recommended that the Federal agency review and approve all requests while another suggested that the Federal agency approve only consumptive uses. One commenter recommended that the repository be given the authority to review and approve requests. Another commenter saw the involvement of the Federal agency as unnecessary and burdensome, and said that it could unreasonably delay archeologists working under contracts to complete reports within short time frames.

Repositories generally have extensive experience in responding to requests to use collections because the activity is a routine element of providing curatorial services. On the other hand, many, if not most, Federal agencies generally have neither the experience nor qualified professional staff to evaluate such requests. We agree that potential users could be unnecessarily delayed if the repository were required to submit requests to the Federal agency for review and approval.

Therefore, paragraph (a) in this section clarifies that the Repository Official is responsible for making collections available in accordance with any terms and conditions specified in the contract, memorandum or agreement for curatorial services. In addition, paragraph (j) in § 79.8 recommends that the contract, memorandum or agreement for curatorial services specify whether the repository is to approve consumptive uses. Otherwise, the Federal Agency Official should review and approve consumptive uses.

Paragraph (b) in this section discusses scientific and educational uses of collections. Curators, conservators, collection managers and exhibitors have been added to the list of qualified professionals who might use a collection for scientific and educational uses, while students have been deleted from the list. Students may use a collection when under the direction of a qualified professional. The paragraph now requires that copies of any resulting publications be provided to certain parties, and the certain parties be acknowledged in any resulting exhibits and publications.

Paragraph (c) in this section discusses religious uses of collections A large number of commenters asked that the rule define or provide guidance on who in qualified to use religious remains in a collection. The First Amendment to the U.S. Constitution generally prohibits the Federal Government from determining which persons are appropriate for practicing a particular religion. The concerns raised by commenters have been adressed, to the extent possible, by providing examples of persons who might have an interest in religious remains for use in religious rituals or spiritual activities

Paragraph (d) in this section specifies restrictions that are to be placed on the use of collections. The text of paragraph (d)(1) more accurately reflects the language in section 9(a) of ARPA and section 304 of NHPA regarding withholding information relating to the nature, location or character of a prehistoric or historic resource. Paragraph (d)(2) specifies to whom confidential information may be released and how requests for the information are to be made. The text of this paragraph follows the language in section 9(b) of ARPA and § –.18 of ARPA's implementing rules regarding the release of confidential information.

Several commenters felt that, until such time as a mechanism of repatriation of human remains and funerary objects is established, exhibition of such materials should be prohibited. Others thought that human remains and funerary objects should be available for exhibitions, research and educational purposes when done sensitively or when there are no known descendants. A few commenters said that Indian owners must consent to uses of collections from Indian lands. Other commenters said that Federal agencies should consult Indian tribes prior to determining how to handle religious remains.

Those concerns have been addressed in paragraphs (e) and (f) of § 79.8 and in paragraphs (d)(3) and (d)(4) of § 79.10. The text of these four paragraphs conform to the requirements of sections 4(c) and 4(g)(2) of ARPA, and §§ –.7 and –.9 of ARPA's implementing regulations. As a result of these changes, § 79.6(b)(4) in the proposed rule has been deleted.

Specifically, when a collection is from Indian lands, § .8(e) requires that any contract, memorandum or agreement for curatorial services include such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands. In this regard, paragraph 79.10(d)(3) requires the placement of such terms and conditions as may be requested on the use of material remains and on access to associated records.

When a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, paragraph 79.8(f) requires that any contract, memorandum or agreement for curatorial services include such terms and conditions as may have been developed pursuant to § –.7 of ARPA's uniform regulations. In this regard, § 79.10(d)(4) requires the placement of such terms and conditions as may have been developed on the use

of material remains and on access to associated records.

Paragraph (e) in this section requires a written loan agreement between the Repository Official and the borrower. Sections 79.10 (e)(1) through (e)(6) specify the minimum contents of a loan agreement.

Paragraph (f) in this section says that the Federal agency in to ensure that the repository maintains administrative records that document approved scientific, educational and religious uses of the collection.

Paragraph (g) in this section says that repositories may charge reasonable user fees. Several commenters noted that repositories generally have standard fee structures associated with the use of collections. They pointed out that fee structures ordinarily are determined based on the repository's internal operating procedures. For example, enabling legislation, charters or bylaws may specify whether fees may be charged and how the fees are to be determined. Another commenter questioned the authority of the U.S. Government to influence a repository's fee structure. As a result of these comments, the statement that "Fees should be determined in consultation with the Federal Agency Official" has been deleted.

Two other commenters suggested that Indian owners and tribal members be exempt from paying fees when they use collections from Indian lands or when they use religious remains in religious rituals or spiritual activities. As previously indicated, repositories ordinarily base fee structures on internal operating procedures. Certainly, when such fees are charged they should be of a reasonable nature for the purpose of recovering actual costs incurred in connection with making collections available. When a repository does charge a user fee, any desired exemptions should be written into the contract, memorandum or agreement for curatorial services.

Section 79.7 Contracts and Agreements (Renumbered § 79.8; Retitled "Terms and Conditions To Include in Contracts, Memoranda and Agreements for Curatorial Services")

Paragraph (a) in this section of the proposed rule has been deleted because it relates to activities that take place prior to the conduct of field work that generates a collection, a subject that is beyond the scope of this rulemaking. However, it is extremely important for Federal Agency Officials to consult with curators, collections managers and conservators at the repository that will be receiving the anticipated collection regarding the repository's procedures, and to instruct field personnel in those procedures, so that the collection may be properly prepared in the field for submittal to the repository. For example, field personnel should be made aware of the repository's procedures for cleaning, labeling, cataloging, documenting, conserving and packaging material remains. They also should be made aware of the repository's procedures for preparing, handling, organizing and processing associated records. The importance of this should not be underestimated because, when a collection is not properly prepared in the field, a repository often will require more funds to process the collection.

Paragraph (b) in this section of the proposed rule has been revised to say that Federal agencies are to ensue that any contract, memorandum, agreement or other appropriate written instrument for curatorial services includes the terms and conditions contained in this section. The paragraph appears in the final rule as the introductory statement to this section.

Paragraphs (a) through (q) in the final rule list the terms and conditions to be included. Some paragraphs appeared in the proposed rule as paragraphs (b)(1) through (b)(10). Several new paragraphs have been added to accommodate suggestions from commenters.

A new paragraph (a) requires that any contract, memorandum, agreement or other appropriate written instrument for curatorial services contain a statement that identifies the collection or group of collections to be covered.

Paragraph (b) requires a statement that identifies who owns and has jurisdiction over the collection.

New paragraphs (c) and (d) require statements that describes the work to be performed by the repository, and the responsibilities of the Federal agency and any other appropriate party.

Paragraph (e) requires a statement that, when the collection is from Indian lands, the Indian landowner and the Indian tribe having jurisdiction over the lands consent to the disposition. It also requires the inclusion of such terms and conditions as may be requested by the Indian landowner and the Indian tribe.

Several commenters noted that, when a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, any contract, memorandum or agreement for curatorial services must contain such terms and conditions as may have been developed during consultations between the Federal agency and the pertinent Indian tribe. One of those commenters pointed out that this would be particularly important to ensure that religious remains are treated in a manner that will not place a burden on religious beliefs and practices. A new paragraph (f) addresses those comments.

Paragraph (g) requires that the term of the contract, memorandum or agreement; and procedures for modification, suspension, extension, and termination be specified.

One commenter voiced concern about the Federal Government entering into contracts, memoranda and agreements for curatorial services that have a finite term. The commenter was concerned that, when a repository declines to renew such an arrangement, the Federal Government would have to pay costs associated with transporting and processing the collection into another repository, and that this scenario could be repeated time and time again.

It certainly is possible that the scenario described by the commenter could happen. However, we believe that it is unlikely to occur, particularly on any regular basis because, when a repository agrees to house and maintain a collection, it generally does so because its professional staff have a research interest in the collection. Typically, researchers prefer to retain collections within their own facility on a long-term, if not a permanent, basis so that the collections within their own facility on a long-term, if not a permanent, basis so that the collections are readily available for study and restudy. In any event, when a Federal agency is providing funds to a repository to maintain a contract, memorandum or agreement for curatorial services, there must be a finite term because Federal agencies cannot obligate future year monies until appropriated by the U.S. Congress. In such instances, agencies should include amounts necessary for maintaining contracts, memoranda and agreements for curatorial services in annual requests for appropriations and in annual operating budgets.

One commenter recommended adding a statement to paragraph (g) that Indian owners of collections be notified in the event of termination or suspension of a contract. Another commenter recommended adding a statement that specifies the responsibilities of the repository when it, rather than the Federal agency, terminates a contract. The commenter was concerned about situations where the Federal Government had provided the repository with funds to build additional, permanent storage areas, and wondered

how the Federal Government would be compensated.

The procedures for modifying, suspending, extending, and terminating the contract, memorandum or agreement should address these concerns, as appropriate. This is implicit in pragraph (g), which purposefully is written in a generic manner. Thus, the suggestions have not been added.

Paragraph (h) requires a statement that identifies costs associated with the contract, memorandum or agreement; the funds or services to be provided by the repository, the Federal agency and any other appropriate party; and the schedule for any payments.

Paragraph (i) requires inclusion of any special procedures and restrictions for handling, storing, inspecting, inventorying, cleaning, conserving and exhibiting the collection.

Paragraph (j) requires inclusion of instructions and any terms and conditions for making the collection available for scientific, educational and religious uses. The paragraph has been revised to remove awkward language that was contained in the proposed rule.

Paragraph (k) requires inclusion of instructions for restricting access to information relating to the nature, location and character of the prehistoric or historic resource from which the material remains are excavated or recovered.

One commenter suggested adding a requirement that the Federal Agency Official be notified whenever a collection under the agency's jurisdiction is used for research since the results of the research could benefit the agency. Certainly, Federal agencies may benefit from the results of such studies, and should receive copies of any resulting publications. A new paragraph (l) requires that copies of such publications be provided to the Federal Agency Official and other pertinent parties. If a Federal agency or other pertinent party would like to be notified each time that a collection under its jurisdiction is used, this should be stipulated in the contract, memorandum or agreement for curatorial services. We believe that such notification should be discretionary and, therefore, have not included it as a requirement in this final rulemaking.

One commenter suggested revising § 79.7(b)(4) in the proposed rule to require that inspections and inventories be conducted at least every three years. This suggestion has not been incorporated because the frequency will vary according to the nature and content of the collection. Section 79.11 of the final rule sets forth requirements and guidance for determining the frequency that is appropriate for a particular collection.

Whatever frequency is determined to be appropriate is to appear in the contract, memorandum or agreement for curatorial services for that collection. This is reflected in § 79.8(m) in the final rulemaking.

One commenter was concerned that a repository might respond directly to a request for transfer or repatriation of a collection without the approval of the Federal Agency Official. In response, a new paragraph (n) requires the Repository Official to redirect any such request to the Federal agency and, when the Federal agency is administering the collection on behalf of a non-Federal owner, to the owner. Paragraph (o) prohibits the Repository Official from transferring, repatriating or discarding a collection without the written permission of the Federal agency and, when the collection is not federally-owned, the owner.

Paragraph (p) requires a statement that the Repository Official shall not sell the collection, while paragraph (q) requires a statement that the repository shall provide curatorial services in accordance with the regulations in this part.

One commenter suggested that the collection being received by a repository under a contract, memorandum or agreement should enhance or be in line with the museum's mission statement. We agree with the basic concept upon which this suggestion is based. That is, a repository that has expertise in maintaining certain kinds of collections would be more likely to provide adequate, long-term care for similar collections than would a repository that lacks such expertise. This concept is reflected in § 79.6(b) of the final rule, which presents guidelines for selecting a repository.

Section 79.8 Disposition of Collections (Divided Into Two Sections, as Follows: Renumbered § 79.5, Retitled "Management and Preservation of Collections"; and Renumbered § 79.6, Retitled "Methods To Secure Curatorial Services")

This section received more comments than any other section. In response, it has been substantially revised and divided into two sections. Renumbered § 79.5 establishes Federal agency responsibilities for the long-term management and preservation of collections that are subject to this part. Renumbered § 79.6 identifies a variety of methods that can be used by Federal agencies to secure curatorial services.

Renumbered § 79.5. Section 79.5(a) in the final rulemaking sets forth procedures by which Federal agencies ensure that preexisting collections are being properly managed and preserved. Federal agencies are to review and evaluate the curatorial services that are being provided by repositories to preexisting collections. When an agency determines that the services are inadequate, the agency may either work cooperatively with the repository and other appropriate parties to eliminate the inadequacies within a reasonable time frame and schedule, or move the collections to another repository that does have the capability to provide adequate long-term curatorial services. Prior to moving collections, Federal agencies should determine if it may be more cost effective to provide funds or services to the repository to assist in eliminating the inadequacies.

The time frame and schedule to eliminate inadequacies will vary according to the specific actions to be taken and the level of funds or services to be provided by the various parties. Ten or more years may be appropriate in some cases while one or two years may be appropriate in other cases. Deficient repositories that are unwilling or unable to take steps to eliminate inadequacies must realize that such a decision on their part may negatively affect their facility's present and future standing to house collections subject to these regulations.

Section 79.5(b) of the final rulemaking sets forth procedures by which Federal agencies are to deposit collections in a repository. Much of the substance has been taken from § 79.8(a) in the proposed rule. However, § 79.8(a)(1) in the proposed rule has been deleted to remove the implication that a Federal agency is to select a repository in consultation with other parties such as the State Historic Preservation Officer. Although a Federal agency may consult with experts such as those listed in § 79.6(c) of this final rule for technical assistance, the Federal Agency Official is the decisionmaker in regard to selecting a repository.

Section 79.5(c) of the final rulemaking identifies certain administrative records that Federal agencies are to maintain on the disposition of each collection. It contains what was listed in § 79.8(f) in the proposed rule. These records are not to be confused with associated records, as defined in § 79.4 of this part, which are maintained by the repository as a component of the collection.

Several commenters questioned the need for Federal agencies to maintain administrative records on the disposition of their collections. We disagree. The GAO reported (GAO/

RCED–88–3, Dec. 1987) that the Federal agencies it had studied lack records and systems for maintaining accountability over their collections. Unfortunately, this is the case with many Federal agencies. It is all too common for an agency not to know the location or contents of its collections, let alone know what collections it owns. The requirement to maintain administrative records has been retained in the final rulemaking.

A number of commenters recommended that pertinent non-Federal parties receive copies of certain associated records. For example, each State has officials who are responsible for developing and implementing the State's historic preservation plan, and for maintaining the State's site files. Many Indian tribes also have officials who carry out comparable activities for the tribe. Commenters said that these officials need to be provided with information about prehistoric and historic resources that are within their respective States and reservations, including information on the disposition of collections that are excavated or removed from those resources.

We agree that pertinent State and Tribal Officials and other appropriate parties should be provided with certain information and documentation. However, because this matter was not addressed in the proposed rule that was published on August 28, 1987 (52 FR 32740), it cannot be addressed in this final rulemaking. Proposed amendments to this part that would call for the distribution of records to other parties appear in 90–21349 published elsewhere in this issue of the Federal Register.

A number of commenters suggested that the rule provide a process for the repatriation of human remains and funerary objects to the pertinent Indian tribes for religiously prescribed treatment. One of those commenters felt that any repatriation rule must be developed in consultation with Indian tribes and traditional religious leaders.

Since the inception of the discipline in the nineteenth century, archeologists have excavated, studied and preserved human remains and objects found in unmarked graves at prehistoric and historic sites. The study of such materials can yield important information on a wide variety of topics, including human evolution and migrations; the social customs and values of past societies; dietary practices, social organization, subsistence strategies and health of past societies; and the epidemiology of diseases. Today, however, many Indian groups object to the excavation, study and retention of such materials in museums for future study.

Many different and often conflicting points of view have been expressed by Indian tribes, the scientific community, and State and Federal agencies on the repatriation of human remains, funerary objects and other material remains found in archeological sites and collections that may be of religious or sacred importance. The extreme positions in this debate are: (1) Human remains and funerary objects are sacred and should be reburied; they are not scientific specimens or property that can be owned by any person, museum or government agency; and (2) human remains and objects excavated or removed from unmarked graves at prehistoric and historic sites are scientific specimens that should be studied and preserved in a museum so that they will be available in the future for additional research when new analytical techniques are developed. There are many positions between these extremes.

During the past decade, the number of requests made by Indian tribes to museums and Federal and State Governments for repatriation and reburial of human remains and funerary objects has increased. A few Indian organizations have issued resolutions and statements urging the repatriation and reburial of all materials in the nation's museums that the organizations consider to be of religious or sacred importance. Several national archeological and museum organizations have adopted policies for their memberships to follow when excavating or storing human remains and objects that may be of religious or sacred importance. Many State Governments have enacted legislation to address the excavation and reburial of human remains located on State lands. A number of Federal agencies have adopted agency-specific policies and procedures to respond to requests for repatriation of human remains and funerary objects excavated or removed from public lands. In addition, during sessions of the 100th and 101st U.S. Congress, a number of bills have been introduced that would address the issue at a national level.

The issue is a complex one that requires sensitivity, patience and compromise by all parties involved. Experience has shown that all parties can benefit when requests for repatriation and reburial are handled on a case by case basis, using existing authorities, regulations, policies and procedures (e.g., by placing terms and conditions in an ARPA permit).

In any event, a procedure that would call for the release of human skeletal remains, funerary objects and other religious remains cannot be included in the final rulemaking because this matter was not addressed in the proposed rule that was published on August 28, 1987 (52 FR 32740). A procedure for releasing particular human skeletal remains and objects excavated or removed from public lands into the custody of the pertinent Indian tribe or other Native American group is being drafted by the Departments of the Interior, Agriculture, Defense, and the Tennessee Valley Authority as part of an amendment to ARPA's uniform regulations. In addition, the Department of the Interior is revising its "Guidelines for the Disposition of Archeological and Historical Human Remains," issued on July 23, 1982. Both documents would be subject to public review and comment.

Many commenters said that § 79.8(e) of the proposed rule, which prohibits the Federal Agency Official from discarding a collection, is too restrictive. Commenters felt that the rule should provide a mechanism to discard material remains that were indiscriminately collected or have no scientific value. others said that material remains that consist of bulky, highly redundant, non-diagnostic items (e.g., unmodified shell, bricks and fire-cracked rock) are valuable and should be collected, analyzed and reported upon. However, because of the sheer volume of these types of remains and their limited potential for future research, the commenters said that, after analysis and reporting is complete, only a sample should be retained for future research.

We agree that Federal agencies should be able to discard, under certain circumstances, particular material remains. However, because procedures that would provide for the discard of material remains were not included in the proposed rule that was published on August 28, 1987 (52 FR 32740), such procedures cannot be included in the final rulemaking. Proposed amendments to this part that would establish procedures for discarding material remains appear in 90–21349 published elsewhere in this issue of the Federal Register.

Renumbered § 79.6. Section 79.8(d) of the proposed rule, which lists methods that can be used by Federal agencies to secure curatorial services, has been revised and appears as paragraph (a) of renumbered § 79.6. Two methods that appeared in the proposed rule have been deleted and one method has been clarified.

Several commenters questioned the authority of a Federal agency to transfer title (whether by donation or exchange) to a federally-owned collection to a non-Federal party. After examining applicable statutes and accompanying regulations and legislative histories, it is clear that Federal agencies do not have such authority. As a result, the method of transferring a collection by donation from a Federal agency to a non-Federal party has been deleted. For the same reason, the method of exchanging collections has been deleted.

The applicable authorities include the Antiquities Act and 43 CFR part 3, which state that collections that are recovered under that Act are to be deposited in a public museum and, when the museum ceases to exist, in the proper national depository. ARPA and its implementing rules also state that collections that are excavated or removed from public lands pursuant to that Act are to remain the property of the U.S. Government. Furthermore, because collections increase in value (e.g., scientific, interpretive or commercial) over time, they would not be categorized as surplus Federal personal property that could be transferred by donation to a non-Federal party under the Federal Property and Administrative Services Act (40 U.S.C. 484) and 41 CFR part 101.

The legislative history accompanying ARPA provides further clarification in regard to the intent of the term "exchange" as used in section 5 of the Act. Specifically, on page 10 of Senate Report No. 96–179, the U.S. Senate's Committee on Energy and Natural Resources says that "* * * those establishments or agencies that maintain exhibition artifacts should be able, as they have in the past, to exchange their cultural resources with other establishments or agencies for the scientific and educational benefit of the public." On page 9 of House Report No. 96–311, the U.S. House of Representatives' Committee on Interior and Insular Affairs says that "* * * all archaeological resources removed from public lands and copies of the associated records and data will remain the property of the United States and be preserved in a suitable location, such as a museum or university * * *" and that the "* * * subsequent storage or display of these artifacts should not, however, be narrowly construed and may include private as well as public museums or institutions which have adequate resources to protect the artifacts and to provide a public, educational, or interpretive service." Clearly, the intent is for the Federal Government to maintain title to collections recovered from public lands, and that those collections are to be stored or loaned to institutions that will exhibit and interpret them for the public.

One commenter expressed confusion over the meaning of § 79.8(d)(2) of the proposed rule, which says that Federal agencies could include curatorial requirements in an initial permit or contract for archeological services. This was meant to apply to archeological activities permitted under ARPA, the Antiquities Act or other authority, where the Federal land manager could require the archeological permittee to provide for curatorial services as a condition to the issuance of the archeological permit. This has been clarified in renumbered § 79.6(a)(6).

Section 79.8(b) in the proposed rule, which provides guidelines to assist Federal agencies in selecting a repository, appears as renumbered paragraph 79.6(b) in the final rule. While the paragraph has been shortened by removing redundant language, the substance remains the same.

Several commenters felt that, by following the guidelines in this paragraph, costs for curatorial services would be higher. For example, one commenter said that Federal agencies would have to move preexisting collections such as those in repositories that are located far from the site or project area. Another commenter said that licensees and permittees such as an electric utility are required to seek lowest cost bids, and was not convinced that the guidelines would reduce curatorial costs.

We disagree. The guidelines in § 79.6(b) are suggestions, not requirements. Federal agencies are not under any obligation to move preexisting collections if the repositories that are caring for those collections have the capability to provide adequate long-term curatorial services, as set forth in this regulation. When contracting for curatorial services, Federal agencies consider the cost proposal as well as the technical proposal. To receive a contract, the repository's technical proposal must respond to the scope of work and the cost proposal must be within the limits set in the request for proposal. The guidelines contained in this rulemaking are based on the assumption that a repository that has been maintaining collections from a particular site, project location, geographic region or cultural area generally is more likely to be able to provide curatorial services for an additional collection from the same site, location, region or area at a lower cost than a repository that does not have such expertise.

Section 79.8(c) in the proposed rule, which identifies sources for technical assistance, appears as renumbered § 79.6(c) in the final rule. In response to several comments, it has been expanded to include Tribal Historic Preservation Officers, staff at Indian tribal museums, Indian tribal elders and religious leaders. When a collection contains remains of tribal religious or sacred importance, consultations with such persons would be particularly important to ensure that appropriate terms and conditions are included in the contract, memorandum or agreement for curatorial services. For example, it may be appropriate for tribal elders and religious leaders to conduct certain ceremonies prior to the placement of the collection in the repository or to perform periodic ceremonies in the repository.

Section 79.9 Periodic Inspections (Renumbered Section 79.11; Retitled "Conduct of Inspections and Inventories")

One commenter suggested that the process of conducting periodic inspections and inventories would generate a lot of unnecessary work and documentation that would not be cost-effective. Another commenter felt that inspections are redundant and unnecessarily burdensome. We disagree. By law, Federal agencies are accountable for property that is owned by the U.S. Government. Periodic inspections and inventories of Federal personal property, which includes collections subject to this part, must be conducted and documented to comply with Federal statutes and regulations governing the management of Federal property. Such activities also are standard practice within the museum profession. This requirement has been clarified in § 79.11(a) of the final rule.

Section 79.11(b) of the final rule states that the Federal Agency Official is responsible for ensuring that the Repository Official performs certain inspections and inventory activities on behalf of the Federal agency. This revision has been made to clarify that the Federal agency, not the repository, is responsible for complying with Federal statutes and regulations on the management of Federal property. The activities listed in this paragraph appeared in § 79.9(a) in the proposed rule. References to collections from Indian lands and to the participation of Indian tribal representatives in inspections and inventories have been added, where appropriate.

One commenter felt that many repositories would cancel curatorial agreements with Federal agencies if they are required to inventory collections on an annual basis at no cost to the Federal agency. Another commenter stated that Federal agencies should pay costs associated with inspections and inventories. A third commenter asked who would pay for the inspections.

The rulemaking does not require that collections be inventoried annually. It requires that collections be inventoried periodically, with the frequency to be mutually agreed upon, in writing, by the Federal Agency Official and the Repository Official. In addition, the rule does not require that repositories conduct inventories and inspections at no cost to the U.S. Government. Section 79.7(a)(5) of the final rule states that costs associated with inventories and inspections may be funded by Federal agencies.

Section 79.11(c), which appeared as § 79.9(b) in the proposed rule, specifies that certain inspections are to be conducted by Federal agency staff. One commenter suggested that these inspections be delegated to other parties because a Federal agency may not have the expertise or resources to perform the inspection. These particular inspections cannot be delegated to non-Federal parties. However, recognizing that the level of curatorial expertise varies greatly among the different Federal agencies, Federal agencies that lack sufficient staff expertise should consult with persons such as those listed in § 79.6(c) who do have expertise in curatorial matters. Alternatively, agencies should enter into an interagency agreement with another Federal agency, as provided in § 79.11(e), that does have the necessary staff expertise.

Several commenters suggested that the rule establish time frames for the conduct of inspections and inventories. One commenter suggested that the repository inspect the physical plant at least annually and that the Federal agency inspect the repository at least every three years. Another commenter suggested that a maximum time period such as three years be specified for all inspections. One commenter was concerned that, if a term of years is not stated in the rule, there is opportunity for Federal agencies, through neglect, to permanently relinquish their curatorial responsibilities. Another commenter felt that the frequency and methods for conducting inspections and inventories should not be based on the nature and content of the collection, but did not suggest alternative criteria for determining the frequency and methods.

None of those suggestions have been adopted because the frequency of inspections should be determined on a case by case basis. Factors that would affect the frequency of inspections would include the nature and content of the collection, any terms and conditions developed in regard to collections from Indian lands and to collections from public lands that contain religious remains, the security and environmental control features of the repository, and the repository's standard inspection and inventory practices. By requiring the Federal Agency Official and the Repository Official to agree, in writing, on the frequency and methods, the regulation removes any opportunity for a Federal agency, through neglect, to relinquish its curatorial responsibilities.

Two commenters provided technical advice on the conduct of inspections and inventories. One noted that fragile or nonlithic materials should be closely monitored because they are susceptible to deterioration and damage. The other noted that more frequent handling of fragile materials during inspections and inventories would accelerate the breakdown of the materials. The commenter recommended that material remains be viewed but handled as little as possible during such inspections. These comments have been incorporated into new §§ 79.11 (d)(3) and (d)(4).

One commenter recommended that Federal agencies pass management checks and responsibilities to one Federal agency with curatorial experience, such as the National Park Service. Another commenter asked an Office of Curatorial Inspection would be established to oversee inspections. These suggestions have not been adopted because Federal historic preservation statutes and regulations clearly indicate that Federal agencies have the responsibility to manage and preserve historic properties, including collections, under their control or jurisdiction. However, when two or more Federal agencies deposit collections in the same repository, the Federal Agency Officials should enter into interagency agreements for the purpose of coordinating inspections and inventories. Such cooperation should reduce the number of inspections that are conducted by both Federal agency and repository staff. It also should ensure consistency in the conduct of inspections and inventories. Section 79.11(e) of the final rule, which was § 79.9(d) of the proposed rule, recommends that Federal agencies enter into interagency agreements for such purposes.

Two commenters agreed that it was desirable to encourage Federal agencies to cooperate with each other in conducting inspections. However, one commenter stated that it may be difficult to accomplish because agencies may not know that a repository contains collections that are owned by other Federal agencies. In addition, the same commenter stated that agencies that have existing agreements with repositories may be reluctant to change either the inspection period or inventory standards.

Section 79.11(e) sets forth a recommendation, not a requirement, to coordinate inspections and inventories. To the extent possible, coordinating inspections and inventories would be economically advantageous to Federal agencies and repositories alike because it would reduce staff time and travel associated with such activities. We would encourage Federal agencies to ask repositories if other federally-owned or administered collections are in their care, and to modify existing agreements, as appropriate, with those repositories to coordinate inspections and inventories.

Another commenter recommended including reference to Indian tribes and individuals as being qualified to conduct the inspections required of Federal agencies pursuant to § 79.11(e). The inspections referenced in this paragraph are to determine whether the repository substantially complies with the minimum standards set forth in this part and to evaluate the performance of the repository in providing curatorial services under any contract, memorandum, agreement or other appropriate written instrument. As previously mentioned, those inspections cannot be delegated to non-Federal parties, although non-Federal parties are not excluded from participating. The commenter's concern that Indian tribes and individuals be able to participate in inspections is acknowledged in §§ 79.11(b)(10)(ii) and (b)(10)(iii).

Section 79.10 Funding (Renumbered Section 79.7; Retitled "Methods To Fund Curatorial Services")

Many commenters identified insufficient funding by Federal agencies as the major obstacle toward providing adequate, long-term care of collections. Most commenters recommended that explicit language be added to this section of the rule stating that Federal agencies have an affirmative responsibility to provide sufficient funds

to cover curatorial costs for their collections.

We agree that Federal agencies generally have provided insufficient monies to carry out curatorial activities, whether they use Federal or non-Federal repositories. Clearly, Federal agencies may fund a variety of curatorial activities using monies appropriated annually by the U.S. Congress, subject to any specific statutory authorities or limitations applicable to a particular agency. Sections 79.7(a)(1) through (a)(6) contain a non-inclusive list of curatorial activities that may be funded, as appropriate, by Federal agencies.

Three activities that were not contained in the proposed rule have been added: (1) Activities associated with the conduct of inspections and inventories required under the rulemaking; (2) activities that would assist repositories in eliminating deficiencies; and (3) activities associated with the removal of collections from repositories that can no longer provide adequate long-term curatorial services. Providing funds or services to assist deficient non-Federal repositories oftentimes may be more economical than moving a collection, particularly when the repositories have been storing preexisting collections for long periods of time at no cost to the U.S. Government.

Section 79.7(b) of the final rule states that Federal agencies may charge licensees and permittees reasonable costs for curatorial activities as a condition to the issuance of a Federal license or permit. One commenter suggested that licensees and permittees be required to provide for curation in lieu of paying for reasonable curatorial costs. This suggestion has not been adopted because it would not have been in keeping with statutory language or Congressional intent.[3]

Another commenter suggested that contractors be required to pay reasonable costs for curatorial activities as a condition to the issuance of the contract. When the U.S. Government contracts for archeological investigations in connection with a Federal action, the contract should provide for curation of the resulting collection when alternative arrangements are not available (*e.g.*, a Federal agency may have a preexisting agreement with a specific repository in which the parties agree that the repository will privide curatorial services for collections generated in the future). In any event, the suggestion is beyond on scope of this rulemaking.

Repositories also have a responsibility to ensure that they have sufficient financial resources to carry out agreements that they enter into with Federal agencies to provide curatorial services. This is especially important when the agree to provide such services at no cost to the U.S. Government. Section 79.7(c) clarifies that when a Federal agency deposits a collection in a repository that agrees to provide curatorial services at no cost to the U.S. Government, the Federal agency should ensure that the repository has sufficient financial resources to support its operations and any needed improvements.

Several commenters indicated that a single, lump sum payment to a repository for curatorial services in perpetuity often only covers initial processing, cataloging and accessioning. In response, some repositories have raised their fees while others have refused to take new collections without a contract or other written agreement for annual payments. Regardless of whether a single, lump sum payment or annual payments are made, Federal agencies must ensure that sufficient funds are provided to repositories to pay for long-term curatorial services.

In response to the concerns voiced by commenters, a new § 79.7(d) has been added to the final rule which states that funds for curatorial services should include costs for initially processing, cataloging, accessioning, storing, inspecting, inventorying, maintaining, and conserving collections. Sections 79.7 (d)(1) and (d)(2), which appeared at §§ 79.10 (f) and (g) in the proposed rule, identify those costs that should be included in project planning and mitigation budgets. A new § 79.7(d)(3) identifies those costs that should be included in annual operating budgets.

Section 79.7(e), which was § 79.10(h) in the proposed rule, states how the one percent limitation on data recovery contained in the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*) may be waived. One commenter felt that curatorial costs should be included within one percent limitation. We agree. However, section 208(e) of the National Historic Preservation Act Amendments does authorize Federal agencies to waive the limitation in certain instances.[4] This paragraph merely restates the authority available to Federal agencies to waive the one percent limitation.

One commenter recommended that the rule be revised to contain a provision establishing a central fund to defray curatorial costs. Operating under the misconception that most repositories economically profit from caring Federal collections, the commenter suggested that monies for the fund could be raised by charging an application fee or by requiring a repository to post a performance bond.

We agree that one way of financing curatorial costs would be to establish a central fund. We doubt, however, that sufficient monies would be generated for such a fund by charging an application fee or by requiring that a bond be posted. Moreover, through enactment of the various Federal historic preservation statutes, the U.S. Congress clearly has directed Federal agencies to include preservation costs in project budgets and annual operating budgets, and to charge reasonable costs to licensees and permittees. Therefore, the recommendation has not been adopted.

Another commenter felt that the regulation would cause a significant amount of additional funds to be expended on staffing and on the construction of facilities. This rulemaking does not place any new requirements on Federal agencies. Federal agencies currently are responsible for ensuring that collections resulting from Federal projects and programs are preserved for future research and for the development of public interpretive programs. There is not question that providing for adequate long-term curatorial services will require the expenditure of funds. This rulemaking establishes standards, procedures and guidelines to be followed by Federal agencies to ensure that collections are preserved in an effective and efficient manner. Section 79.6 of the rulemaking identifies a variety of methods, some which are less costly than others, that are available to a Federal agency to secure curatorial services. In addition, §§ 79.6(b) and 79.11(e) in the final rule provide suggestions (e.g., consolidating

[3] Section 110(g) of NHPA authorizes Federal agencies to charge reasonable costs to Federal licensees and permittees as a condition to the issuance of a license or permit. In addition, section 208(2) of the National Historic Preservation Act Amendments (16 U.S.C. 470) authorizes Federal agencies to charge reasonable costs for identification, surveys, evluation, and data recovery to Federal licensees and permittees as a condition to the issuance of such license or permit. Reasonable costs are described on pages 36 and 40 of House Report No. 96–1457 as meaning at a rate commensurate with the licensee's or permittee's interest in or benefit from the undertaking that affects historic properties.

[4] House Report No. 96–1457 states that the U.S. Congress expects data recovery costs to exceed the one percent limitation only in unusual cases. Examples provided on page 40 of the report include cases where rich concentrations of historic materials will be destroyed or where the project costs are not commensurate with the necessary data recovery.

collections or coordinating inspections) that would further reduce curatorial costs.

Appendix A—Example of a Short-term Loan Agreement (Renumbered App. C; Retitled "Example of a Short-term Loan Agreement for a Federally-owned Collection")

At the suggestion of one commenter, the appendices have been reordered to reflect the natural order of events (*i.e.*, a repository would sign a memorandum of understanding with a Federal agency to provide curatorial services before it would loan items in collection). As a result, the short-term loan agreement appears in appendix C to the final rulemaking.

The short-term loan agreement remains relatively unchanged, having received few comments.

One commenter felt that the collection's owner should approve each request for short-term loan, publication and exhibition. This suggestion has not been incorporated because such involvement would create unnecessary paperwork for the Federal Agency Official, any non-Federal owner and the repository, and would create undue delays for the intended borrower. Section 79.8(j) of this final rulemaking requires that any terms and conditions regarding the loan, study, exhibition or other use of a collection be included in any contract, memorandum of agreement for curatorial services. The short-term loan agreement has been revised to indicate that those terms and conditions should be attached to the loan agreement.

The same commenter asked for examples of appropriate time limits for short-term loans and for clarification on who would collect insurance. Short-term loans generally should not exceed one year in duration, although the length of loans would be dependent on the purpose of the loan. The certificate of insurance should stipulate the recipient of any monies collected under an insurance policy. Generally speaking, the owner of the collection would be the recipient. When a collection is damaged rather than lost, monies collected under any insurance policy should be used to conserve the damaged collection, as directed by the Federal Agency Official.

One commenter recommended that a new appendix be added that presents an example of a deed of gift. A deed of gift would be used when a Federal or federally authorized archeological project takes place on non-public lands, and the non-Federal owner of the materials remains donates or otherwise transfers title to the U.S. Government. In response to this comment, an example of a deed of gift has been added. It appears in appendix A to the final rulemaking.

Appendix B—Example of a Memorandum of Understanding for Curatorial Services (Retitled "Example of a Memorandum of Understanding for Curatorial Services for a Federally-Owned Collection")

Few comments were made on the example of a memorandum of understanding for curatorial serivces. As such, the memorandum remains relatively unchanged.

One commenter felt that the memorandum of understanding appeared to be far too extensive and cumbersome. We disagree. The memorandum is an example of a typical agreement between a Federal agency and a repository for curatorial services.

One commenter asked if a Federal agency and a repository would have to enter into a new memorandum each time the Federal agency wanted to deposit another collection in the repository. To avoid this, the commenter recommended that the memorandum stipulate volume parameters in lieu of the site numbers of particular sites so that additional collections could be deposited in the future.

This suggestion would be appropriate in those instances when a Federal agency wanted to enter into an open ended agreement with a repository for curatorial services for an as yet undetermined number of collections. The example memorandum presented in Appendix B is merely illustrative. As noted in § 79.1 of this rulemaking, the example memorandum should be revised according to the needs of the Federal agency, the nature and content of the collection, and the type of legal instrument being used.

Two commenters recommended that the memorandum reference qualifications or positions to be assigned responsibility for the collection rather than specify staff by name, thereby avoiding the need to amend the memorandum each time personnel changed. Paragraphs 1(c) and 2(b) of the memorandum have been revised accordingly.

One commenter suggested expanding paragraph 1(i) of the memorandum in the final rule to clarify that the views of pertinent Native American organizations must be considered when requests are made to the repository to borrow religious remains or to study human skeletal remains. Section 79.8 of this rulemaking requires that any contract, memorandum or agreement for curatorial services include certain terms and conditions, including those that may have been developed pursuant to § -.7 of ARPA's implementing regulations concerning archeological resources on public lands that the Federal land manager has determined are of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands. Such terms and conditions either would be identified within the body of the contract, memorandum or agreement for curatorial services, or would be appended to it. In the example memorandum, they are appended as attachment C. Either method would be appropriate.

In regard to paragraph 1(j) in the memorandum in the final rule, one commenter stated that it would be impossible for a repository to guarantee that a collection would never be lost, stolen, destroyed or damaged. The commenter recommended adding a disclaimer for acts of God, accidents or other unanticipated circumstances. We agree that a repository would not be liable for actions not under its control. The purpose of the paragraph is to ensure that a repository does not take any action or allow any person to take any action that would cause a collection to be lost, stolen, destroyed or damaged.

Another commenter asked that a statement be added to the memorandum that instructs the repository not to repatriate any of a collection without the prior written permission of the Federal Agency Official, and to redirect any request for repatriation of any of the collection to the Federal Agency Official. This has been reflected in paragraph 1(j) of the memorandum in the final rule.

Authorship

The author of this rulemaking is Michele C. Aubry (Archeologist and Program Analyst) in the office of the Departmental Consulting Archeologist, National Park Service, Washington, DC.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With the National Environmental Policy Act

Federal agencies that conduct or authorize archeological investigations are required by law to maintain and preserve the resulting collections of artifacts, specimens and associated records. Issuance of this document will result in more consistent, systematic and professional care of those collections. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). In addition, the National Park Service has determined that this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 79

Archeology, Archives and records, Historic preservation, Indians-lands, Museums, Public lands.

Dated: June 28, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set forth in the preamble, title 36, chapter I of the Code of Federal Regulations is amended by adding a new part 79 to read as follows:

PART 79—CURATION OF FEDERALLY-OWNED AND ADMINISTERED ARCHEOLOGICAL COLLECTIONS

Sec.

Authority: 15 U.S.C. 470*aa-mm*, 16 U.S.C. 470 *et seq.*

§ 79.1 Purpose.

(a) The regulations in this part establish definitions, standards, procedures and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered under the authority of the Antiquities Act (16 U.S.C. 431–433), the Reservoir Salvage Act (16 U.S.C. 469–469*c*), section of the National Historic Preservation Act (16 U.S.C. 470*h*–2) or the Archaeological Resources Protection Act (16 U.S.C. 470*aa-mm*). They establish:

(1) Procedures and guidelines to manage and preserve collections;

(2) Terms and conditions for Federal agencies to include in contracts, memoranda, agreements or other written instruments with repositories for curatorial services;

(3) Standards to determine when a repository has the capability to provide long-term curatorial services; and

(4) Guidelines to provide access to, loan and otherwise use collections.

(b) The regulations in this part contain three appendices that provide additional guidance for use by the Federal Agency Official.

(1) Appendix A to these regulations contains an example of an agreement between a Federal agency and a non-Federal owner of material remains who is donating the remains to the Federal agency.

(2) Appendix B to these regulations contains an example of a memorandum of understanding between a Federal agency and a repository for long-term curatorial services for a federally-owned collection.

(3) Appendix C to these regulations contains an example of an agreement between a repository and a third party for a short-term loan of a federally-owned collection (or a part thereof).

(4) The three appendices are meant to illustrate how such agreements might appear. They should be revised according to the:

(i) Needs of the Federal agency and any non-Federal owner;

(ii) Nature and content of the collection; and

(iii) Type of contract, memorandum, agreement or other written instrument being used.

(5) When a repository has preexisting standard forms (e.g., a short-term loan form) that are consistent with the regulations in this part, those forms may be used in lieu of developing new ones.

§ 79.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470*a*) which requires that the Secretary of the Interior issue regulations ensuring that significant prehistoric and historic artifacts, and associated records, recovered under the authority of section of that Act (16 U.S.C. 470*h*–2), the Reservoir Salvage Act (16 U.S.C. 469–469*c*) and the Archeological Resources Protection Act (16 U.S.C. 470*aa-mm*) are deposited in an institution with adequate long-term curatorial capabilities.

(b) In addition, the regulations in this part are promulgated pursuant to section 5 of the Archeological Resources Protection Act (16 U.S.C. 470*dd*) which gives the Secretary of the Interior discretionary authority to promulgate regulations for the:

(1) Exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archeological resources recovered from public and Indian lands under that Act; and

(2) Ultimate disposition of archeological resources recovered under that Act (16 U.S.C. 470*aa-mm*), the Antiquities Act (16 U.S.C. 431–433) or the Reservoir Salvage Act (16 U.S.C. 469–469*c*).

(3) It further states that any exchange or ultimate disposition of resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over such lands.

§ 79.3 Applicability.

(a) The regulations in this part apply to collections, as defined in § 79.4 of this part, that are excavated or removed under the authority of the Antiquities Act (16 U.S.C. 431–433), the Reservoir Salvage Act (16 U.S.C. 469–469*c*), section of the National Historic Preservation Act (16 U.S.C. 470*h*-2) or the Archeological Resources Act (16 U.S.C. 470*aa-mm*). Such collections generally include those that are the result of a prehistoric or historic resource survey, excavation or other study conducted in connection with a Federal action, assistance, license or permit.

(1) Material remains, as defined in § 79.4 of this part, that are excavated or removed from a prehistoric or historic resource generally are the property of the landowner.

(2) Data that are generated as a result of a prehistoric or historic resource survey, excavation or other study are recorded in associated records, as defined in § 79.4 of this part. Associated records that are prepared or assembled in connection with a Federal or federally authorized prehistoric or historic resource survey, excavation or other study are the property of the U.S. Government, regardless of the location of the resource.

(b) The regulations in this part apply to preexisting and new collections that meet the requirements of paragraph (a) of this section. However, the regulations shall not be applied in a manner that would supersede or breach material terms and conditions in any contract, grant, license, permit, memorandum, or agreement entered into by or on behalf of a Federal agency prior to the effective date of this regulation.

(c) Collections that are excavated or removed pursuant to the Antiquities Act (16 U.S.C. 431–433) remain subject to that Act, the Act's implementing rule (43 CFR part 3), and the terms and conditions of the pertinent Antiquities Act permit or other approval.

(d) Collections that are excavated or removed pursuant to the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*) remain subject to that Act, the Act's implementing rules (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229), and the terms and conditions of the pertinent Archaeological Resources Protection Act permit or other approval.

(e) Any repository that is providing curatorial services for a collection subject to the regulations in this part must possess the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, to safeguard and preserve the associated records and any material remains that are deposited in the repository.

§ 79.4 Definitions.

As used for purposes of this part:

(a) *Collection* means material remains that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

(1) *Material remains* means artifacts, objects, specimens and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource. Classes of material remains (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Components of structures and features (such as houses, mills, piers, fortifications, raceways, earthworks and mounds);

(ii) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry and textiles);

(iii) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers and pigments);

(iv) By-products, waste products or debris resulting from the manufacture or use of man-made or natural materials (such as slag, dumps, cores and debitage);

(v) Organic material (such as vegetable and animal remains, and coprolites);

(vi) Human remains (such as bone, teeth, mummified flesh, burials and cremations);

(vii) Components of petroglyphs, pictographs, intaglios or other works of artistic or symbolic representation;

(viii) Components of shipwrecks (such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents and cargo);

(ix) Environmental and chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and

(x) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

(2) *Associated records* means original records (or copies thereof) that are prepared, assembled and document efforts to locate, evaluate, record, study, preserve or recover a prehistoric or historic resource. Some records such as field notes, artifact inventories and oral histories may be originals that are prepared as a result of the field work, analysis and report preparation. Other records such as deeds, survey plats, historical maps and diaries may be copies of original public or archival documents that are assembled and studied as a result of historical research. Classes of associated records (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Records relating to the identification, evaluation, documentation, study, preservation or recovery of a resource (such as site forms, field notes, drawings, maps, photographs, slides, negatives, films, video and audio cassette tapes, oral histories, artifact inventories, laboratory reports, computer cards and tapes, computer disks and diskettes, printouts of computerized data, manuscripts, reports, and accession, catalog and inventory records);

(ii) Records relating to the identification of a resource using remote sensing methods and equipment (such as satellite and aerial photography and imagery, side scan sonar, magnetometers, subbottom profilers, radar and fathometers);

(iii) Public records essential to understanding the resource (such as deeds, survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms and reports);

(iv) Archival records essential to understanding the resource (such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, correspondence, diaries, ledgers, catalogs and receipts); and

(v) Administrative records relating to the survey, excavation or other study of the resource (such as scopes of work, requests for proposals, research proposals, contracts, antiquities permits, reports, documents relating to compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470*f*), and National Register of Historic Places nomination and determination of eligibility forms).

(b) *Curatorial services.* Providing curatorial services means managing and preserving a collection according to professional museum and archival practices, including, but not limited to:

(1) Inventorying, accessioning, labeling and cataloging a collection;

(2) Identifying, evaluating and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physically secure controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection; and

(6) Handling, cleaning, stabilizing and conserving a collection in such a manner to preserve it.

(c) *Federal Agency Official* means any officer, employee or agent officially representing the secretary of the department or the head of any other agency or instrumentality of the United States having primary management authority over a collection that is subject to this part.

(d) *Indian lands* has the same meaning as in § –.3(e) of uniform regulations 43 CFR part 7, 36 CFR part

296, 18 CFR part 1312, and 32 CFR part 229.

(e) *Indian tribe* has the same meaning as in § –.3(f) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(f) *Personal property* has the same meaning as in 41 CFR 100–43.001–14. Collections, equipment (e.g., a specimen cabinet or exhibit case), materials and supplies are classes of personal property.

(g) *Public lands* has the same meaning as in § –.3(d) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(h) *Qualified museum professional* means a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under the person's management and care, and commensurate with the person's duties and responsibilities. Standards that may be used, as appropriate, for classifying positions and for evaluating a person's qualifications include, but are not limited to, the following:

(1) The Office of Personnel Management's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906—028–00000–0 (1981)) are used by Federal agencies to determine appropriate occupational series and grade levels for positions in the Federal service. Occupational series most commonly associated with museum work are the museum curator series (GS/GM–1015) and the museum technician and specialist series (GS/GM–1016). Other scientific and professional series that may have collateral museum duties include, but are not limited to, the archivist series (GS/GM–1420), the archeologist series (GS/GM–193), the anthropologist series (GS/GM–190), and the historian series (GS/GM–170). In general, grades GS–9 and below are assistants and trainees while grades GS–11 and above are professionals at the full performance level. Grades GS–11 and above are determined according to the level of independent professional responsibility, degree of specialization and scholarship, and the nature, variety, complexity, type and scope of the work.

(2) The Office of Personnel Management's "Qualification Standards for Positions under the General Schedule (Handbook X–118)" (U.S. Government Printing Office, stock No. 906–030–00000–4 (1986)) establish educational, experience and training requirements for employment with the Federal Government under the various occupational series. A graduate degree in museum science or applicable subject matter, or equivalent training and experience, and three years of professional experience are required for museum positions at grades GS–11 and above.

(3) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983) provide technical advice about archeological and historic preservation activities and methods for use by Federal, State and local Governments and others. One section presents qualification standards for a number of historic preservation professions. While no standards are presented for collections managers, museum curators or technicians, standards are presented for other professions (i.e., historians, archeologists, architectural historians, architects, and historic architects) that may have collateral museum duties.

(4) Copies of the Office of Personnel Management's standards, including subscriptions for subsequent updates, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Office of Personnel Management's Library, 1900 E Street NW., Washington, DC, at any regional or area office of the Office of Personnel Management, at any Federal Job Information Center, and at any personnel office of any Federal agency. Copies of the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" are available at no charge from the Interagency Resources Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

(i) *Religious remains* means material remains that the Federal Agency Official has determined are of traditional religious or sacred importance to an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

(j) *Repository* means a facility such as a museum, archeological center, laboratory or storage facility managed by a university, college, museum, other educational or scientific institution, a Federal, State of local Government agency or Indian tribe that can provide professional, systematic and accountable curatorial services on a long-term basis.

(k) *Repository Official* means any officer, employee or agent officially representing the repository that is providing curatorial services for a collection that is subject to this part.

(l) *Tribal Official* means the chief executive officer or any officer, employee or agent officially representing the Indian tribe.

§ 79.5 Management and preservation of collections.

The Federal Agency Official is responsible for the long-term management and preservation of preexisting and new collections subject to this part. Such collections shall be placed in a repository with adequate long-term curatorial capabilities, as set forth in § 79.9 of this part, appropriate to the nature and content of the collections.

(a) *Preexisting collections.* The Federal Agency Official is responsible for ensuring that preexisting collections, meaning those collections that are placed in repositories prior to the effective date of this rule, are being properly managed and preserved. The Federal Agency Official shall identify such repositories, and review and evaluate the curatorial services that are being provided to preexisting collections. When the Federal Agency Official determines that such a repository does not have the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, the Federal Agency Official may either:

(1) Enter into or amend an existing contract, memorandum, agreement or other appropriate written instrument for curatorial services for the purpose of:

(i) Identifying specific actions that shall be taken by the repository, the Federal agency or other appropriate party to eliminate the inadequacies;

(ii) Specifying a reasonable period of time and a schedule within which the actions shall be completed; and

(iii) Specifying any necessary funds or services that shall be provided by the repository, the Federal agency or other appropriate party to complete the actions; or

(2) Remove the collections from the repository and deposit them in another repository that can provide such services in accordance with the regulations in this part. Prior to moving any collection that is from Indian lands, the Federal Agency Official must obtain the written consent of the Indian landowner and the Indian tribe having jurisdiction over the lands.

(b) *New collections.* The Federal Agency Official shall deposit a collection in a repository upon determining that:

(1) The repository has the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part;

(2) The repository's facilities, written curatorial policies and operating procedures are consistent with the regulations in this part;

(3) The repository has certified, in writing, that the collection shall be cared for, maintained and made accessible in accordance with the regulations in this part and any terms and conditions that are specified by the Federal Agency Official;

(4) When the collection is from Indian lands, written consent to the disposition has been obtained from the Indian landowner and the Indian tribe having jurisdiction over the lands; and

(5) The initial processing of the material remains (including appropriate cleaning, sorting, labeling, cataloging, stabilizing and packaging) has been completed, and associated records have been prepared and organized in accordance with the repository's processing and documentation procedures.

(c) *Retention of records by Federal agencies.* The Federal Agency Official shall maintain administrative records on the disposition of each collection including, but not limited to:

(1) The name and location of the repository where the collection is deposited;

(2) A copy of the contract, memorandum, agreement or other appropriate written instrument, and any subsequent amendments, between the Federal agency, the repository and any other party for curatorial services;

(3) A catalog list of the contents of the collection that is deposited in the repository;

(4) A list of any other Federal personal property that is furnished to the repository as a part of the contract, memorandum, agreement or other appropriate written instrument for curatorial services;

(5) Copies of reports documenting inspections, inventories and investigations of loss, damage or destruction that are conducted pursuant to § 79.11 of this part; and

(6) Any subsequent permanent transfer of the collection (or a part thereof) to another repository.

§ 79.6 Methods to secure curatorial services.

(a) Federal agencies may secure curatorial services using a variety of methods, subject to Federal procurement and property management statutes, regulations, and any agency-specific statutes and regulations on the management of museum collections. Methods that may be used by Federal agencies to secure curatorial services include, but are not limited to:

(1) Placing the collection in a repository that is owned, leased or otherwise operated by the Federal agency;

(2) Entering into a contract or purchase order with a repository for curatorial services;

(3) Entering into a cooperative agreement, a memorandum of understanding, a memorandum of agreement or other agreement, as appropriate, with a State, local or Indian tribal repository, a university, museum or other scientific or educational institution that operates or manages a repository, for curatorial services;

(4) Entering an interagency agreement with another Federal agency for curatorial services;

(5) Transferring the collection to another Federal agency for preservation; and

(6) For archeological activities permitted on public or Indian lands under the Archaeological Resources Protection Act (16 U.S.C. 470 *aa–mm*), the Antiquities Act (16 U.S.C. 431–433) or other authority, requiring the archeological permittee to provide for curatorial services as a condition to the issuance of the archeological permit.

(b) *Guidelines for selecting a repository.* (1) When possible, the collection should be deposited in a repository that:

(i) Is in the State of origin;

(ii) Stores and maintains other collections from the same site or project location; or

(iii) Houses collections from a similar geographic region or cultural area.

(2) The collection should not be subdivided and stored at more than a single repository unless such subdivision is necessary to meet special storage, conservation or research needs.

(3) Except when non-federally-owned material remains are retained and disposed of by the owner, material remains and associated records should be deposited in the same repository to maintain the integrity and research value of the collection.

(c) *Sources for technical assistance.* The Federal Agency Official should consult with persons having expertise in the management and preservation of collections prior to preparing a scope of work or a request for proposals for curatorial services. This will help ensure that the resulting contract, memorandum, agreement or other written instrument meets the needs of the collection, including any special needs in regard to any religious remains. It also will aid the Federal Agency Official in evaluating the qualifications and appropriateness of a repository, and in determining whether the repository has the capability to provide adequate long-term curatorial services for a collection. Persons, agencies, institutions and organizations that may be able to provide technical assistance include, but are not limited to the:

(1) Federal agency's Historic Preservation Officer;

(2) State Historic Preservation Officer;

(3) Tribal Historic Preservation Officer;

(4) State Archeologist;

(5) Curators, collections managers, conservators, archivists, archeologists, historians and anthropologists in Federal and State Government agencies and Indian tribal museum;

(6) Indian tribal elders and religious leaders;

(7) Smithsonian Institution;

(8) American Association of Museums; and

(9) National Park Service.

§ 79.7 Methods to fund curatorial services.

A variety of methods are used by Federal agencies to ensure that sufficient funds are available for adequate, long-term care and maintenance of collections. Those methods include, but are not limited to, the following:

(a) Federal agencies may fund a variety of curatorial activities using monies appropriated annually by the U.S. Congress, subject to any specific statutory authorities or limitations applicable to a particular agency. As appropriate, curatorial activities that may be funded by Federal agencies include, but are not limited to:

(1) Purchasing, constructing, leasing, renovating, upgrading, expanding, operating, and maintaining a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(2) Entering into and maintaining on a cost-reimbursable or cost-sharing basis a contract, memorandum, agreement, or other appropriate written instrument with a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(3) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470*h*–2), reimbursing a grantee for curatorial costs paid by the grantee as a part of the grant project;

(4) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470*h*–2), reimbursing a State for curatorial costs paid by the State agency to carry out the historic

preservation responsibilities of the Federal agency;

(5) Conducting inspections and inventories in accordance with § 79.11 of this part; and

(6) When a repository that is housing and maintaining a collection can no longer provide adequate long-term curatorial services, as set forth in § 79.9 of this part, either:

(i) Providing such funds or services as may be agreed upon pursuant to § 79.5(a)(1) of this part to assist the repository in eliminating the deficiencies; or

(ii) Removing the collection from the repository and depositing it in another repository that can provide curatorial services in accordance with the regulations in this part.

(b) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470*h*–2) and section 208(2) of the National Historic Preservation Act Amendments (16 U.S.C. 469*c*–2), for federally licensed or permitted projects or programs, Federal agencies may charge licensees and permittees reasonable costs for curatorial activities associated with identification, surveys, evaluation and data recovery as a condition to the issuance of a Federal license or permit.

(c) Federal agencies may deposit collections in a repository that agrees to provide curatorial services at no cost to the U.S. Government. This generally occurs when a collection is excavated or removed from public or Indian lands under a research permit issued pursuant to the Antiquities Act (16 U.S.C. 431–433) or the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*). A repository also may agree to provide curatorial services as a public service or as a means of ensuring direct access to a collection for long-term study and use. Federal agencies should ensure that a repository that agrees to provide curatorial services at no cost to the U.S. Government has sufficient financial resources to support its operations and any needed improvements.

(d) Funds provided to a repository for curatorial services should include costs for initially processing, cataloging and accessioning the collection as well as costs for storing, inspecting, inventorying, maintaining, and conserving the collection on a long-term basis.

(1) Funds to initially process, catalog and accession a collection to be generated during identification and evaluation surveys should be included in project planning budgets.

(2) Funds to initially process, catalog and accession a collection to be generated during data recovery operations should be included in project mitigation budgets.

(3) Funds to store, inspect, inventory, maintain and conserve a collection on a long-term basis should be included in annual operating budgets.

(e) When the Federal Agency Official determines that data recovery costs may exceed the one percent limitation contained in the Archeological and Historic Preservation Act (16 U.S.C. 469*c*), as authorized under section 208(3) of the National Historic Preservation Act Amendments (16 U.S.C. 469*c*–2), the limitation may be waived, in appropriate cases, after the Federal Agency Official has:

(1) Obtained the concurrence of the Secretary of the U.S. Department of the Interior by sending a written request to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013–7127; and

(2) Notified the Committee on Energy and Natural Resources of the U.S. Senate and the Committee on Interior and Insular Affairs of the U.S. House of Representatives.

§ 79.8 Terms and conditions to include in contracts, memoranda and agreements for curatorial services.

The Federal Agency Official shall ensure that any contract, memorandum, agreement or other appropriate written instrument for curatorial services that is entered into by or on behalf of that Official, a Repository Official and any other appropriate party contains the following:

(a) A statement that identifies the collection or group of collections to be covered and any other U.S. Government-owned personal property to be furnished to the repository;

(b) A statement that identifies who owns and has jurisdiction over the collection;

(c) A statement of work to be performed by the repository;

(d) A statement of the responsibilities of the Federal agency and any other appropriate party;

(e) When the collection is from Indian lands:

(1) A statement that the Indian landowner and the Indian tribe having jurisdiction over the lands consent to the disposition; and

(2) Such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands;

(f) When the collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, such terms and conditions as may have been developed pursuant to § –.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229;

(g) The term of the contract, memorandum or agreement; and procedures for modification, suspension, extension, and termination;

(h) A statement of costs associated with the contract, memorandum or agreement; the funds or services to be provided by the repository, the Federal agency and any other appropriate party; and the schedule for any payments;

(i) Any special procedures and restrictions for handling, storing, inspecting, inventorying, cleaning, conserving, and exhibiting the collection;

(j) Instructions and any terms and conditions for making the collection available for scientific, educational and religious uses, including procedures and criteria to be used by the Repository Official to review, approve or deny, and document actions taken in response to requests for study, laboratory analysis, loan, exhibition, use in religious rituals or spiritual activities, and other uses. When the Repository Official to approve consumptive uses, this should be specified; otherwise, the Federal Agency Official should review and approve consumptive uses. When the repository's existing operating procedures and criteria for evaluating requests to use collections are consistent with the regulations in this part, they may be used, after making any necessary modifications, in lieu of developing new ones;

(k) Instructions for restricting access to information relating to the nature, location and character of the prehistoric or historic resource from which the material remains are excavated or removed;

(l) A statement that copies of any publications resulting from study of the collection are to be provided to the Federal Agency Official and, when the collection is from Indian lands, to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands;

(m) A statement that specifies the frequency and methods for conducting and documenting the inspections and inventories stipulated in § 79.11 of this part;

(n) A statement that the Repository Official shall redirect any request for transfer or repatriation of a federally-owned collection (or any part thereof) to the Federal Agency Official, and redirect any request for transfer or

repatriation of a federally administered collection (or any part thereof) to the Federal Agency Official and the owner;

(o) A statement that the Repository Official shall not transfer, repatriate or discard a federally-owned collection (or any part thereof) without the written permission of the Federal Agency Official, and not transfer, repatriate or discard a federally administered collection (or any part thereof) without the written permission of the Federal Agency Official and the owner;

(p) A statement that the Repository Official shall not sell the collection; and

(q) A statement that the repository shall provide curatorial services in accordance with the regulations in this part.

§ 79.9 Standards to determine when a repository possesses the capability to provide adequate long-term curatorial services.

The Federal Agency Official shall determine that a repository has the capability to provide adequate long-term curatorial services when the repository is able to:

(a) Accession, label, catalog, store, maintain, inventory and conserve the particular collection on a long-term basis using professional museum and archival practices; and

(b) Comply with the following, as appropriate to the nature and consent of the collection;

(1) Maintain complete and accurate records of the collection, including:

(i) Records on acquisitions;

(ii) Catalog and artifact inventory lists;

(iii) Descriptive information, including field notes, site forms and reports;

(iv) Photographs, negatives and slides;

(v) Locational information, including maps;

(vi) Information on the condition of the collection, including any completed conservation treatments;

(vii) Approved loans and other uses;

(viii) Inventory and inspection records, including any environmental monitoring records;

(ix) Records on lost, deteriorated, damaged or destroyed Government properly; and

(x) Records on any deaccessions and subsequent transfers, repatriations or discards, as approved by the Federal Agency Official;

(2) Dedicate the requisite facilities, equipment and space in the physical plant to property store, study and conserve the collection. Space used for storage, study, conservation and, if exhibited, any exhibition must not be used for non-curatorial purposes that would endanger or damage the collection;

(3) Keep the collection under physically secure conditions within storage, laboratory, study and any exhibition areas by:

(i) Having the physical plant meet local electrical, fire, building, health and safety codes;

(ii) Having an appropriate and operational fire detection and suppression system;

(iii) Having an appropriate and operational intrusion detection and deterrent system;

(iv) Having an adequate emergency management plan that establishes procedures for responding to fires, floods, natural disasters, civil unrest, acts of violence, structural failures and failures of mechanical systems within the physical plant;

(v) Providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;

(vi) Limiting and controlling access to keys, the collection and the physical plant; and

(vii) Inspecting the physical plant in accordance with § 79.11 of this part for possible security weaknesses and environmental control problems, and taking necessary actions to maintain the integrity of the collection;

(4) Require staff and any consultants who are responsible for managing and preserving the collection to be qualified museum professionals;

(5) Handle, store, clean, conserve and, if exhibited, exhibit the collection in a manner that:

(i) Is appropriate to the nature of the material remains and associated records;

(ii) Protects them from breakage and possible deterioration from adverse temperature and relative humidity, visible light, ultraviolet radiation, dust, soot, gases, mold, fungus, insects, rodents and general neglect; and

(iii) Preserves data that may be studied in future laboratory analyses. When material remains in a collection are to be treated with chemical solutions or preservatives that will permanently alter the remains, when possible, retain untreated representative samples of each affected artifact type, environmental specimen or other category of material remains to be treated. Untreated samples should not be stabilized or conserved beyond dry brushing;

(6) Store site forms, field notes, artifacts inventory lists, computer disks and tapes, catalog forms and a copy of the final report in a manner that will protect them from theft and fire such as:

(i) Storing the records in an appropriate insulated, fire resistant, locking cabinet, safe, vault or other container, or in a location with a fire suppression system;

(ii) Storing a duplicate set of records in a separate location; or

(iii) Ensuring that records are maintained and accessible through another party. For example, copies of final reports and site forms frequently are maintained by the State Historic Preservation Officer, the State Archeologist or the State museum or universtiy. The Tribal Historic Preservation Officer and Indian tribal museum ordinarily maintain records on collections recovered from sites located on Indian lands. The National Technical Information Service and the Defense Technical Information Service maintain copies of final reports that have been deposited by Federal agencies. The National Archeological Database maintains summary information on archeological reports and projects, including information on the location of those reports.

(7) Inspect the collection in accordance with § 79.11 of this part for possible deterioration and damage, and perform only those actions as are absolutely necessary to stabilize the collection and rid it of any agents of deterioration;

(8) Conduct inventories in accordance with § 79.11 of this part to verify the location of the material remains, associated records and any other Federal personal property that is furnished to the repository; and

(9) Provide access to the collection in accordance with § 79.10 of this part.

§ 79.10 Use of collections.

(a) The Federal Agency Official shall ensure that the Repository Official makes the collection available for scientific, educational and religious uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection.

(b) *Scientific and educational uses.* A collection shall be made available to qualified professionals for study, loan and use for such purposes as in-house and traveling exhibits, teaching, public interpretation, scientific analysis and scholarly research. Qualified professionals would include, but not be limited to, curators, conservators, collection managers, exhibitors, researchers, scholars, archeological

contractors and educators. Students may use a collection when under the direction of a qualified professional. Any resulting exhibits and publications shall acknowledge the repository as the curatorial facility and the Federal agency as the owner or administrator, as appropriate. When the collection is from Indian lands and the Indian landowner and the Indian tribe having jurisdiction over the lands wish to be identified, those individuals and the Indian tribe shall also be acknowledged. Copies of any resulting publications shall be provided to the Repository Official and the Federal Agency Official. When Indian lands are involved, copies of such publications shall also be provided to the Tribal Offical and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands.

(c) *Religious uses.* Religious remains in a collection shall be made available to persons for use in religious rituals or spiritual activities. Religious remains generally are of interest to medicine men and women, and other religious practitioners and persons from Indian tribes, Alaskan Native corporations, Native Hawaiians, and other indigenous and immigrant ethnic, social and religious groups that have aboriginal or historic ties to the lands from which the remains are recovered, and have traditionally used the remains or class of remains in religious rituals or spiritual activities.

(d) *Terms and conditions.* (1) In accordance with section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470*hh*) and section 304 of the National Historic Preservation Act (16 U.S.C. 470 *w*–3), the Federal Agency Official shall restrict access to associated records that contain information relating to the nature, location or character of a prehistoric or historic resource unless the Federal Agency Official determines that such disclosure would not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located.

(2) Section –.18(a)(2) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 sets forth procedures whereby information relating to the nature, location or character of a prehistoric or historic resource may be made available to the Governor of any State. The Federal Agency Official may make information available to other persons who, following the procedures in §–.18(a)(2) of the referenced uniform regulations, demonstrate that the disclosure will not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located. Other persons generally would include, but not be limited to, archeological contractors, researchers, scholars, tribal representatives, Federal, State and local agency personnel, and other persons who are studying the resource or class or resources.

(3) When a collection is from Indian lands, the Federal Agency Official shall place such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(4) When a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the Federal Agency Official shall place such terms and conditions as may have been developed pursuant to § –.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(5) The Federal Agency Official shall not allow uses that would alter, damage or destory an object in a collection unless the Federal Agency Official determines that such use is necessary for scientifc studies or public interpretation, and the potential gain in scientific or interpretive information outweighs the potential loss of the object. When possible, such use should be limited to unprovenienced, nonunique, nonfragile objects, or to a sample of objects drawn from a larger collection of similar objects.

(e) No collection (or a part thereof) shall be loaned to any person without a written agreement between the Repository Official and the borrower that specifies the terms and conditions of the loan. Appendix C to the regulations in this part contains an example of a short-term loan agreement for a federally-owned collection. At a minimum, a loan agreement shall specify:

(1) The collection or object being loaned;

(2) The purpose of the loan;

(3) The length of the loan;

(4) Any restrictions on scientific, educational or religious uses, including whether any object may be altered, damaged or destroyed;

(5) Except as provided in paragraph (e)(4) of this section, that the borrower shall handle the collection or object being borrowed during the term of the loan in accordance with this part so as not to damage or reduce its scentific, educational, religious or cultural value; and

(6) Any requirements for insuring the collection or object being borrowed for any loss, damage or destruction during transit and while in the borrower's possession.

(f) The Federal Agency Official shall ensure that the Repository Official maintains administrative records that document approved scentific, educational and religious uses of the collection.

(g) The Repository Official may charge persons who study, borrow or use a collection (or a part thereof) reasonable fees to cover costs for handling, packing, shipping and insuring material remains, for photocopying associated records, and for other related incidental costs.

§ 79.11 Conduct of inspections and inventories.

(a) The inspections and inventories specified in this section shall be conducted periodically in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), any agency-specific regulations on the management of Federal property, and any agency-specific statutes and regulations on the management of museum collections.

(b) Consistent with paragraph (a) of this section, the Federal Agency Official shall ensure that the Repository Official:

(1) Provides the Federal Agency Official and, when the collection is from Indian lands, the Indian landowner and the Tribal Offical of the Indian tribe that has jurisdiction over the lands with a copy of the catalog list of the contents of the collection received and accessioned by the repository;

(2) Provides the Federal Agency Official will a list of any other U.S. Government-owned personal property received by the repository;

(3) Periodically inspects the physical plant for the purpose of monitoring the physical security and environmental control measures;

(4) Periodically inspects the collection for the purposes of assessing the condition of the material remains and associated records, and of monitoring

those remains and records for possible deterioration and damage;

(5) Periodically inventories the collection by accession, lot or catalog record for the purpose of verifying the location of the material remains and associated records;

(6) Periodically inventories any other U.S. Government-owned personal property in the possession of the repository;

(7) Has qualified museum professionals conduct the inspections and inventories;

(8) Following each inspection and inventory, prepares and provides the Federal Agency Official with a written report of the results of the inspection and inventory, including the status of the collection, treatments completed and recommendations for additional treatments. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report;

(9) Within five (5) days of the discovery of any loss or theft of, deterioriation and damage to, or destruction of the collection (or a part thereof) or any other U.S. Government-owned personal property, prepares and provides the Federal Agency Official with a written notification of the circumstances surrounding the loss, theft, deterioration, damage or destruction. When the collection is from Indian lands, the Indian landowner and the Tribal Official and the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the notification; and

(10) Makes the repository, the collection and any other U.S. Government-owned personal property available for periodic inspection by the:

(i) Federal Agency Official;

(ii) When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands; and

(iii) When the collection contains religious remains, the Indian tribal elders, religious leaders, and other officials representing the Indian tribe or other group for which the remains have religious or sacred importance.

(c) Consistent with paragraph (a) of this section, the Federal Agency Official shall have qualified Federal agency professionals:

(1) Investigate reports of a lost, stolen, deteriorated, damaged or destroyed collection (or a part thereof) or any other U.S. Government-owned personal property; and

(2) Periodically inspect the repository, the collection and any other U.S. Government-owned personal property for the purposes of:

(i) Determining whether the repository is in compliance with the minimum standards set forth in § 79.9 of this part; and

(ii) Evaluating the performance of the repository in providing curatorial services under any contract, memorandum, agreement or other appropriate written instrument.

(d) The frequency and methods for conducting and documenting inspections and inventories stipulated in this section shall be mutually agreed upon, in writing, by the Federal Agency Official and the Repository Official, and be appropriate to the nature and content of the collection:

(1) Collections from Indian lands shall be inspected and inventoried in accordance with such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(2) Religious remains in collections from public lands shall be inspected and inventoried in accordance with such terms and conditions as may have been developed pursuant to § –.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(3) Material remains and records of a fragile or perishable nature should be inspected for deterioration and damage on a more frequent basis than lithic or more stable remains or records.

(4) Because frequent handling will accelerate the breakdown of fragile materials, material remains and records should be viewed but handled as little as possible during inspections and inventories.

(5) Material remains and records of a valuable nature should be inventoried on a more frequent basis than other less valuable remains or records.

(6) Persons such as those listed in § 79.6(c) of this part who have expertise in the management and preservation of similar collections should be able to provide advice to the Federal Agency Official concerning the appropriate frequency and methods for conducting inspections and inventories of a particular collection.

(e) Consistent with the Single Audit Act (31 U.S.C. 75), when two or more Federal agencies deposit collections in the same repository, the Federal Agency Officials should enter into an interagency agreement for the purposes of:

(1) Requesting the Repository Official to coordinate the inspections and inventories, stipulated in paragraph (b) of this section, for each of the collections;

(2) Designating one or more qualified Federal agency professionals to:

(i) Conduct inspections, stipulated in paragraph (c)(2) of this section, on behalf of the other agencies; and

(ii) Following each inspection, prepare and distribute to each Federal Agency Official a written report of findings, including an evaluation of performance and recommendations to correct any deficiencies and resolve any problems that were identified. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report; and

(3) Ensuring consistency in the conduct of inspections and inventories conducted pursuant to this section.

Appendix A to Part 79—Example of a Deed of Gift

DEED OF GIFT
TO THE
(Name of the Federal agency)

Whereas, the (name of the Federal agency), hereinafter called the Recipient, is dedicated to the preservation and protection of artifacts, specimens and associated records that are generated in connection with its projects and programs;

Whereas, certain artifacts and specimens, listed in Attachment A to this Deed of Gift, were recoverd from the (name of the prehistoric or historic resource) site in connection with the Recipient's (name of the Recipient's project) project;

Whereas, the (name of the prehistoric or historic resource) site is located on lands to which title is held by (name of the donor), hereinafter called the Donor, and that the Donor holds free and clear title to the artifacts and specimens; and

Whereas, the Donor is desirous of donating the artifacts and speciments to the Recipient to ensure their continued preservation and protection;

Now therefore, the Donor does hereby unconditionally donate to the Recipient, for unrestricted use, the artifacts and specimens listed in Attachment A to this Deed of Gift; and

The Recipient hereby gratefully acknowleges the receipt of the artifacts and speciments.

Signed: (signature of the Donor)

Date: (date)

Signed: (signature of the Federal Agency Official)

Date: (date)

Attachment A: Inventory of Artifacts and Specimens.

Appendix B to Part 79—Example of a Memorandum of Understanding for Curatorial Services for a Federally-Owned Collection

MEMORANDUM OF UNDERSTANDING FOR CURATORIAL SERVICES BETWEEN THE
(Name of the Federal agency)
AND THE
(Name of the Repository)

This Memorandum of Understanding is entered into this (day) day of (month and year), between the United States of America, acting by and through the (name of the Federal agency), hereinafter called the Depositor, and the (name of the Repository), hereinafter called the Repository, in the State of (name of the State).

The Parties do witnesseth that,

Whereas, the Depositor has the responsibility under Federal law to preserve for future use certain collections of archeological artifacts, specimens and associated records, herein called the Collection, listed in Attachment A which is attached hereto and made a part hereof, and is desirous of obtaining curatorial services; and

Whereas, the Repository is desirous of obtaining, housing and maintaining the Collection, and recognizes the benefits which will accrue to it, the public and scientific interests by housing and maintaining the Collection for study and other educational purposes; and

Whereas, the Parties hereto recognize the Federal Government's continued ownership and control over the Collection and any other U.S. Government-owned personal property, listed in Attachment B which is attached hereto and made a part hereof, provided to the Repository, and the Federal Government's responsibility to ensure that the Collection is suitably managed and preserved for the public good; and

Whereas, the Parties hereto recognize the mutual benefits to be derived by having the Collection suitably housed and maintained by the Repository;

Now therefore, the Parties do mutually agree as follows:

1. The Repository shall:

a. Provide for the professional care and management of the Collection from the (names of the prehistoric and historic resources) sites, assigned (list site numbers) site numbers. The collections were recovered in connection with the (name of the Federal or federally-authorized project) project, located in (name of the nearest city or town), (name of the county) county, in the State of (name of the State).

b. Perform all work necessary to protect the Collection in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C to this Memorandum.

c. Assign as the Curator, the Collections Manager and the Conservator having responsibility for the work under this Memorandum, persons who are qualified museum professionals and whose expertise is appropriate to the nature and content of the Collection.

d. Begin all work on or about (month, date and year) and continue for a period of (number of years) years or until sooner terminated or revoked in accordance with the terms set forth herein.

e. Provide and maintain a repository facility having requisite equipment, space and adequate safeguards for the physical security and controlled environment for the Collection and any other U.S. Government-owned personal property in the possession of the Repository.

f. Not in any way adversely alter or deface any of the Collection except as may be absolutely necessary in the course of stabilization, conservation, scientific study, analysis and research. Any activity that will involve the intentional destruction of any of the Collection must be approved in advance and in writing by the Depositor.

g. Annually inspect the facilities, the Collection and any other U.S. Government-owned personal property. Every (number of years) years inventory the Collection and any other U.S. Government-owned personal property. Perform only those conservation treatments as are absolutely necessary to ensure the physical stability and integrity of the Collection, and report the results of inventories, inspections and treatments to the Depositor.

h. Within five (5) days of discovery, report all instances of and circumstances surrounding loss of, deterioration and damage to, or destruction of the Collection and any other U.S. Government-owned personal property to the Depositor, and those actions taken to stabilize the Collection and to correct any deficiencies in the physical plant or operating procedures that may have contributed to the loss, deterioration, damage or destruction. Any actions that will involve the repair and restoration of any of the Collection and any other U.S. Government-owned personal property must be approved in advance and in writing by the Depositor.

i. Review and approve or deny requests for access to or short-term loan of the Collection (or a part thereof) for scientific, educational or religious uses in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C of this Memorandum. In addition, refer requests for consumptive uses of the Collection (or a part thereof) to the Depositor for approval or denial.

j. Not mortgage, pledge, assign, repatriate, transfer, exchange, give, sublet, discard or part with possession of any of the Collection or any other U.S. Government-owned personal property in any manner to any third party either directly or in-directly without the prior written permission of the Depositor, and redirect any such request to the Depositor for response. In addition, not take any action whereby any of the Collection or any other U.S. Government-owned personal property shall or may be encumbered, seized, taken in execution, sold, attached, lost, stolen, destroyed or damaged.

2. The Depositor shall:

a. On or about (month, date and year), deliver or cause to be delivered to the Repository the Collection, as described in Attachment A, and any other U.S. Government-owned personal property, as described in Attachment B.

b. Assign as the Depositor's Representative having full authority with regard to this Memorandum, a person who meets pertinent professional qualifications.

c. Every (number of years) years, jointly with the Repository's designated representative, have the Depositor's Representative inspect and inventory the Collection and any other U.S. Government-owned personal property, and inspect the repository facility.

d. Review and approve or deny requests for consumptively using the Collection (or a part thereof).

3. Removal of all or any portion of the Collection from the premises of the Repository for scientific, educational or religious purposes may be allowed only in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections; the terms and conditions stipulated in Attachment C to this Memorandum; any conditions for handling, packaging and transporting the Collection; and other conditions that may be specified by the Repository to prevent breakage, deterioration and contamination.

4. The Collection or portions thereof may be exhibited, photographed or otherwise reproduced and studied in accordance with the terms and conditions stipulated in Attachment C to this Memorandum. All exhibits, reproductions and studies shall credit the Depositor, and read as follows: "Courtesy of the (name of the Federal agency)." The Repository agrees to provide the Depositor with copies of any resulting publications.

5. The Repository shall maintain complete and accurate records of the Collection and any other U.S. Government-owned personal property, including information on the study, use, loan and location of said Collection which has been removed from the premises of the Repository.

6. Upon execution by both parties, this Memorandum of Understanding shall be effective on this (day) day of (month and year), and shall remain in effect for (number of years) years, at which time it will be reviewed, revised, as necessary, and reaffirmed or terminated. This Memorandum may be revised or extended by mutual consent of both parties, or by issuance of a written amendment signed and dated by both parties. Either party may terminate this Memorandum by providing 90 days written notice. Upon termination, the Repository shall return such Collection and any other U.S. Government-owned personal property to the destination directed by the Depositor and in such manner to preclude breakage, loss, deterioration and contamination during handling, packaging and shipping, and in accordance with other conditions specified in writing by the Depositor. If the Repository terminates, or is in default of, this Memorandum, the Repository shall fund the packaging and transportation costs. If the Depositor terminates this Memorandum, the

Depositor shall fund the packaging and transportation costs.

7. Title to the Collection being cared for and maintained under this Memorandum lies with the Federal Government.

In witness whereof, the Parties hereto have executed this Memorandum.

Signed: (signature of the Federal Agency Official)

Date: (date)

Signed: (signature of the Repository Official)

Date: (date)

Attachment A: Inventory of the Collection

Attachment B: Inventory of any other U.S. Government-owned Personal Property

Attachment C: Terms and Conditions Required by the Depositor

Appendix C to Part 79—Example of a Short-Term Loan Agreement for a Federally-Owned Collection

SHORT-TERM LOAN AGREEMENT
BETWEEN THE
(Name of the Repository)
AND THE
(Name of the Borrower)

The (name of the Repository), hereinafter called the Repository, agrees to loan to (name of the Borrower), hereinafter called the Borrower, certain artifacts, specimens and associated records, listed in Attachment A, which were collected from the (name of the prehistoric or historic resource) site which is assigned (list site number) site number. The collection was recovered in connection with the (name of the Federal or federally authorized project) project, located in (name of the nearest city or town), (name of the county) county in the State of (name of the State). The Collection is the property of the U.S. Government.

The artifacts, specimens and associated records are being loaned for the purpose of (cite the purpose of the loan), beginning on (month, day and year) and ending on (month, day and year).

During the term of the loan, the Borrower agrees to handle, package and ship or transport the Collection in a manner that protects it from breakage, loss, deterioration and contamination, in conformance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment B to this loan agreement.

The Borrower agrees to assume full responsibility for insuring the Collection or for providing funds for the repair or replacement of objects that are damaged or lost during transit and while in the Borrower's possession. Within five (5) days of discovery, the Borrower will notify the Repository of instances and circumstances surrounding any loss of, deterioration and damage to, or destruction of the Collection and will, at the direction of the Repository, take steps to conserve damaged materials.

The Borrower agrees to acknowledge and credit the U.S. Government and the Repository in any exhibits or publications resulting from the loan. The credit line shall read as follows: "Courtesy of the (names of the Federal agency and the Repository)." The Borrower agrees to provide the Repository and the (name of the Federal agency) with copies of any resulting publications.

Upon termination of this agreement, the Borrower agrees to properly package and ship or transport the Collection to the Repository.

Either party may terminate this agreement, effective not less than (number of days) days after receipt by the other party of written notice, without further liability to either party.

Signed: (signature of the Repository Official)

Date: (date)

Signed: (signature of the Borrower)

Date: (date)

Attachment A: Inventory of the Objects being Loaned.

Attachment B: Terms and Conditions of the Loan.

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federal register

Wednesday
September 12, 1990

Part IV

The President

Proclamation 6175—Agreement on Trade Relations Between the United States of America and the Czech and Slovak Federal Republic

Federal Register
Vol. 55, No. 177
Wednesday, September 12, 1990

Presidential Documents

Title 3—

The President

Proclamation 6175 of September 6, 1990

Agreement on Trade Relations Between the United States of America and the Czech and Slovak Federal Republic

By the President of the United States of America

A Proclamation

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Czech and Slovak Federal Republic to conclude an agreement on trade relations between the United States of America and the Czech and Slovak Federal Republic.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (P.L. 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Czechoslovak Federative Republic," including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Czech, was signed on April 12, 1990, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVIII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

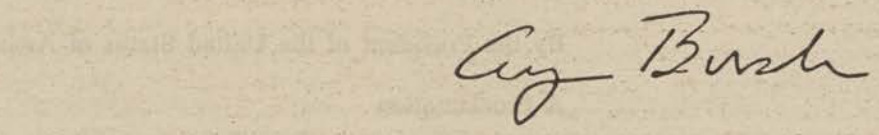
7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405 and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Czech and Slovak Federal Republic, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVIII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register**.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Czechoslovakia".

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



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Presidential Documents

AGREEMENT ON TRADE RELATIONS BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE CZECHOSLOVAK FEDERATIVE REPUBLIC

The Government of the United States of America and the Government of the Czechoslovak Federative Republic (hereinafter referred to collectively as "Parties" and individually as "Party"),

Desiring to develop further the enduring friendship between their nations,

Noting the steady improvement in relations between the two countries,

Desiring to adopt mutually advantageous and equitable rules governing their trade and to ensure a predictable commercial environment,

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging that the development of trade relations and direct contact between enterprises of the Parties, including private enterprises, will promote openness and mutual understanding,

Recognizing that development of bilateral trade may contribute to better mutual understanding and cooperation, and can contribute to the well-being of workers and promote respect for internationally recognized worker rights,

Resolving to incorporate in their trade relations the principles and rules of the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT"), to which both the United States of America and Czechoslovakia are founding contracting parties,

Being convinced that an agreement on trade relations between the two Parties can create a framework which will foster the development and expansion of commercial ties between their respective nationals and companies, and best serve the mutual interests of the Parties,

Have agreed as follows:

ARTICLE I.—APPLICATION OF THE GATT, MOST-FAVORED-NATION TREATMENT, AND THE STATUS OF CERTAIN GATT CODES

1. Both Parties reaffirm the importance of their participation in the GATT and the importance of the provisions and principles of the GATT for their respective economic policies.

2. To this end, the Parties shall apply between themselves the provisions of the GATT, as those provisions apply to each Party, and shall accord each other's products most-favored-nation treatment as provided in the GATT, provided that, to the extent any provision of the GATT is inconsistent with any provision of this Agreement, the latter shall apply.

3. Both Parties reaffirm the importance of their participation in the Agreement on Technical Barriers to Trade, the Agreement on Import Licensing Procedures, the Agreement on Implementation of Article VII of the GATT and the Protocol to that Agreement (Customs Valuation), and the Agreement on Implementation of Article VI of the GATT (Anti-Dumping) and the importance of the provisions and principles therein for their respective economic policies.

Both Parties commit to participating in multilateral negotiations pertaining to those agreements with a view towards improving them.

4. Each Party shall accord to imports of products and services originating in the territory of the other Party most-favored-nation treatment with respect to the allocation of and access to the currency needed to pay for such imports.

ARTICLE II.—MAINTAINING A SATISFACTORY BALANCE OF MARKET OPPORTUNITIES

1. The Parties agree to maintain a satisfactory balance of market access opportunities in trade in products and services, taking into account, inter alia, the extent of tariffs or other duties or charges on trade in products and services; the extent of non-tariff barriers; the effects of state-to-state trade agreements; and the extent of responsibilities and rights deriving from those GATT Codes or similar agreements to which both Parties are signatories, and in particular to reciprocate satisfactorily reductions by the other Party in tariffs and nontariff barriers to trade that result from multilateral negotiations.

2. Each Party shall administer all tariff and nontariff measures affecting trade in products and services in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

ARTICLE III.—GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. Trade shall be effected by contracts between nationals and companies of the United States and economic entities of Czechoslovakia concluded on the basis of non-discrimination and in the exercise of their independent commercial judgement and on the basis of customary commercial considerations such as price, quality, availability, delivery and terms of payment.

2. Neither Party shall require or encourage nationals and companies of the United States or Czechoslovakia to engage in barter or countertrade.

ARTICLE IV.—EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of products and services and to secure favorable conditions for the long term development of trade relations between their respective nationals and companies. The Parties shall promote the development and diversification of their commercial exchanges to the fullest extent possible.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of Czechoslovakia expects that, during the term of this Agreement, economic entities of Czechoslovakia shall, consistent with commercial considerations, increase their purchases of products and services from the United States, while the Government of the United States expects that the effect of this Agreement will be to encourage increased purchases by nationals and companies of the United States of products and services from Czechoslovakia. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty-free basis of all

articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE V.—BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

2. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit the establishment within its territory of commercial representations of nationals and companies of the other Party and shall accord non-discriminatory treatment to the activities of such representations.

3. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms that are mutually agreed between the parties, consistent with such Party's minimum wage laws.

4. Each Party shall permit commercial representations of the other Party to import and use, in accordance with normal commercial practices, office and other equipment in connection with the conduct of their activities in the territory of such Party.

5. Subject to its laws governing foreign missions, each Party shall permit such commercial representations access to office space and living accommodations on a non-discriminatory basis, including at non-discriminatory prices where such prices are set or controlled by the government.

6. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit nationals and companies of the other Party to engage or serve as agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties, provided that such agents, consultants, or distributors are entitled to engage in international trade.

7. Each Party shall, in accordance with its commitments made in the International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, done at Geneva on November 7, 1952, permit commercial representations to stock an adequate supply of samples. In addition, each Party shall permit commercial representations to distribute replacement parts for after-sales services on a non-commercial basis.

8. Each Party shall permit nationals and companies of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national or company.

9. Each Party shall encourage direct contact between nationals and companies of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales. The Parties will permit and encourage direct sales between U.S. nationals and companies and Czechoslovak economic entities.

10. Each Party shall permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall upon request make available non-confidential, non-proprietary information within its possession to nationals and companies of the other Party engaged in such efforts.

11. Each Party shall provide access to governmentally-provided services on a national treatment basis, including public utilities, to nationals and companies

of the other Party in connection with the operations of their commercial representations.

12. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals and companies of the other Party.

ARTICLE VI.—TRADE IN SERVICES

1. The Parties recognize the growing economic significance of service industries and agree to consult on matters affecting the conduct of service business between the two countries and on particular matters of mutual interest relating to individual service sectors with the objective of attaining maximum possible market access.

2. Services subject to existing bilateral agreements, such as civil aviation, and services subject to ongoing negotiations, such as maritime transportation, will be, or will remain, subject to their respective agreements.

3. Provisions elsewhere in this Agreement relating to trade promotion, business facilitation, commercial representation, transfers and convertibility, shall apply to services as appropriate.

ARTICLE VII.—TRANSPARENCY

1. Each Party shall make available publicly, on a timely basis, all laws and regulations, judicial decisions, and administrative rulings of general application related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall also endeavor to provide such information in reading rooms in its own capital and in the capital of the other Party.

2. Each Party shall provide nationals and companies of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Without prejudice to either Party's obligations and rights set forth in the Agreement on Technical Barriers to Trade, each Party shall allow nationals and companies of the other Party the opportunity, to the extent practicable, to comment on the formulation of rules and regulations which affect the conduct of business activities, including, inter alia, the setting of standards and technical regulations.

ARTICLE VIII.—GOVERNMENT COMMERCIAL OFFICES

1. Subject to its laws governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures, third-country nationals.

2. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.

3. Each Party shall encourage the participation of its nationals and companies in the activities of their respective government commercial offices, especially with respect to events held on the premises of such commercial offices.

4. Each Party shall encourage and facilitate access by government commercial office personnel of the other Party to host-country officials at both the federal and subfederal level, and representatives of nationals and companies of the host Party.

5. This Agreement shall not derogate from obligations assumed by either Party concerning the establishment of existing government commercial offices.

ARTICLE IX.—FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. All commercial transactions between nationals or companies of the Parties shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency unless otherwise agreed between the parties to individual transactions.

2. Neither Party shall restrict the export from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in an authorized manner in connection with trade in products and services by nationals or companies of the other Party.

3. Expenditures in the territory of a Party by nationals and companies of the other Party may be made in local currency received in an authorized manner.

4. In connection with trade in products and services, each Party shall grant to nationals and companies of the other Party non-discriminatory treatment with respect to:

(a) opening and maintaining accounts in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country; and

(c) rates of exchange and related matters.

ARTICLE X.—PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Both Parties agree to provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets and layout designs for integrated circuits. Each Party reaffirms its commitments to those international agreements relating to intellectual property to which both Parties are signatories.

2. Each Party reaffirms the commitments made with respect to industrial property in the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967.

3. Each Party reaffirms the commitments made in the Universal Copyright Convention of September 6, 1952, as revised at Paris on July 24, 1971 as well as their commitments made in the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 14, 1971.

4. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, *inter alia*

(a) Provide copyright protection for computer programs and databases as literary works under its copyright laws.

(b) Extend the term of protection for audiovisual works to at least fifty years from the date the work is made public.

(c) Provide protection for sound recordings for a term of at least fifty years from publication, and shall provide rights to prevent unauthorized distribution, reproduction and importation. In addition, the terms of such protection shall permit the owner of rights in the sound recording to prevent the unauthorized rental of a copy of the sound recording, notwithstanding the purchase of the sound recording.

(d) Provide protection for integrated circuit layout designs.

(e) Provide product and process protection for all areas of technology (except the Parties may exclude materials useful solely in atomic weapons).

(f) Provide comprehensive protection for trade secrets.

5. The Parties agree to submit to their respective legislative bodies no later than December 31, 1991 the legislation necessary to carry out the obligations of this Agreement and to exert their best efforts to enact and implement this legislation by that date.

ARTICLE XI.—IMPORT RELIEF

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. Determination of market disruption or threat thereof by the importing Party shall be based upon a good faith application of its laws and on an affirmative finding of relevant facts and on their examination. The importing Party, in determining whether market disruption exists, may consider, among other factors: the volume of imports of the merchandise which is the subject of the inquiry; the effect of imports of the merchandise on prices in the territory of the importing Party for like or directly competitive articles; the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns.

3. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruption. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

4. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures to such extent and for such a time as it deems necessary to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

5. Where in the judgment of the importing Party, emergency action, which may include the existence of critical circumstances, is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

6. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

7. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply laws applicable to unfair trade, including antidumping and countervailing duty laws.

ARTICLE XII.—NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIII.—EXCEPTIONS

1. Nothing in this Agreement shall be construed to prohibit any action by either Party which is required or specifically permitted by the GATT.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit:

(a) measures for the protection of intellectual property rights and for the prevention of deceptive practices as set out in Article X of this Agreement (and the related side letter); provided that such measures shall be related to the extent of any injury suffered or the prevention of such injury; and

(b) any other measure for reasons contemplated by Article XX of the GATT, provided that the term "Agreement" in paragraph (d) of Article XX of the GATT shall be construed to refer to this Agreement.

3. Trade in products or services between the Parties subject to existing bilateral or multilateral agreements (or ongoing negotiations) in specific sectors, such as steel, textiles or civil aviation, shall be, or shall remain, subject to the terms of any such agreement.

4. Each Party reserves the right to deny to any company the advantages of this Agreement if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.

ARTICLE XIV.—DISPUTE SETTLEMENT

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States of America and of Czechoslovakia. Such arbitration may be provided for by agreements in contracts between such nationals or companies, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules, in which case the parties should designate an Appointing Authority under said Rules in a country other than the United States of America or Czechoslovakia.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States of America or Czechoslovakia, that is a party to the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XV.—CONSULTATIONS

1. The Parties shall, in accordance with their respective policies and objectives, cooperate bilaterally and at the international level in the solution of commercial problems of common interest.

2. The Parties agree to set up a Joint Commercial Commission which will, subject to the terms of reference of its establishment, foster economic cooperation and the expansion of trade under this Agreement, and review periodically the operation of this Agreement and make recommendations for achieving its objectives.

3. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement or other relevant aspects of the relations between the Parties.

ARTICLE XVI.—AREAS FOR FURTHER ECONOMIC COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.

2. The Parties shall take appropriate steps to foster economic cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards. Among the objectives of such cooperation shall be:

—the development and prosperity of the Czechoslovak and American economies and standards of living,

—the encouragement of scientific and technological programs,

—the creation of new employment opportunities,

—the protection and improvement of the environment.

ARTICLE XVII.—DEFINITIONS

1. For purposes of this Agreement,

(a) "company" of a Party means any kind of corporation, association, state enterprise, cooperative or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned;

(b) "economic entity" means natural and juridical persons, including nationals and companies, entitled, according to Czechoslovak law, to carry out foreign trade activities;

(c) "commercial representation" means an organizational component part of a Party's company established in accordance with the laws of the respective Party;

(d) "non-discriminatory treatment" or "non-discrimination" means the better of national treatment or most-favored-nation treatment;

(e) "national treatment," when applied to a company or national, means that treatment which is at least as favorable as the most favorable treatment accorded by a Party to companies or nationals of that Party in like circumstances.

ARTICLE XVIII.—ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including Side Letters which are an integral part of the Agreement) shall enter into force on the date of exchange of written notices of acceptance by the two Governments and shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraphs (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out its obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law, seek to minimize disruption to existing trade relations between the two countries.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, D.C. on April Twelfth, 1990, in duplicate, in the English and Czech languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA
Carla A. Hills
FOR THE GOVERNMENT OF THE
CZECHOSLOVAK FEDERATIVE REPUBLIC
Andrej Barcak

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

Dear Mr. Minister:

I have the honor to confirm the following understanding reached between the delegations of the Czechoslovak Federative Republic and the United States of America in the course of negotiating the Agreement on Trade Relations signed on this day.

State-to-State Trade Agreements

With reference to paragraph 1 of Article II, the Government of Czechoslovakia confirms its policy to reduce the role in its foreign trade of state-to-state trade agreements which provide for imports of specified quantities of goods.

Commercial Representations

The Government of Czechoslovakia will make every effort to ensure prompt passage of its proposed legislation changing the authorization process for commercial representations to a simple registration process. If these legislative proposals do not become law by December 31, 1990, the Government of Czechoslovakia agrees to consult with the Government of the United States in order to agree on appropriate measures to realize the intent of this understanding.

Registration to Engage in Foreign Trade

Both Parties affirm their intention to promote the broadest possible opportunities for direct trade between their nationals and companies.

In order to meet this objective, the Government of Czechoslovakia confirms its policy to liberalize completely but gradually the Czechoslovak foreign trade system including the complete but gradual replacement of the authorization requirement for economic entities engaging in foreign commerce with a simple registration procedure.

The first measures in this respect will be taken on as broad a basis as possible in the amendment to the existing law which will be submitted by the Government of Czechoslovakia to the Federal Assembly in a short time and the Government will exert its best efforts to obtain enactment of and to implement the change no later than July 1, 1990.

The successive substantial changes will follow along with the transition of the Czechoslovak economy towards an economy based on the principles of market economy during the year 1991.

If the simple registration system has not been implemented by September 30, 1991, the Government of Czechoslovakia will consult with the Government of the United States, in accordance with Article XV, in order to agree on appropriate measures to realize the intent of this understanding.

In addition, the Government of Czechoslovakia will seek to expedite the approval of requests for authorization or registration in order not to impede the expansion of trade between the two countries.

Financial Provisions

As part of its economic liberalization process, the Government of Czechoslovakia intends to make its currency convertible as soon as possible. Until the Czechoslovak currency becomes freely convertible, the Government of Czechoslovakia, for purposes of this Agreement, will provide access to freely convertible currencies, including through auctions, on a most-favored-nation basis.

State Enterprises

The Parties recognize that Czechoslovakia has entered a period of dynamic political and economic change and that the economy of Czechoslovakia is in transition towards an economy based on the principles of market economy and free trade and that it is the policy of the Government of Czechoslovakia to diminish rapidly the role of state enterprises in the Czechoslovak economy.

The Government of Czechoslovakia maintains that state enterprises which engage in the purchase and sale involving either imports or exports of products or services are autonomous, profit-oriented and risk-taking entities and act independently from the State, which does not exercise control over them. The Government of Czechoslovakia further maintains that state ownership *per se* does not confer special powers or privileges since the state-owned enterprises operate in a competitive environment and act in a non-discriminatory manner in accordance with commercial principles and do not have the ability by their buying and selling to influence the level or direction of imports and exports.

It is understood that, with respect to international trade, state enterprises shall operate in accordance with the relevant provisions of the GATT, including, without limitation, Articles II, XI, XII, XIII, and XIV.

I have the honor to propose that this understanding be treated as an integral part of the Agreement on Trade Relations between our two countries signed on this day. I would be grateful if you would confirm that this understanding is shared by your government.

Sincerely,

Carla A. Hills.

Dr. Andrej Barcak

Minister of Foreign Trade

Washington, 12 April 1990

Dear Ambassador Hills:

I have the honor to confirm receipt of your letter which reads as follows:

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It is understood that, with respect to international trade, state enterprises shall operate in accordance with the relevant provisions of the GATT, including, without limitation, Articles II, XI, XII, XIII, and XIV.

I have the honor of confirming that my Government shares this understanding, and that this exchange of letters constitutes an integral part of that Agreement.

Sincerely,

Andrej Barcak

Minister of Foreign Trade

Government of the Czechoslovak Federative Republic

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the Government of the United States of America and the Czechoslovak Federative Republic, I have the honor to advise you that it is my understanding that, to fulfill the obligations under Article X of the Agreement, your Government intends to incorporate the following principles in your national legislation on intellectual property.

A. *Copyright Protection for Computer Programs*

Copyright protection for computer programs shall extend to all types of computer programs including application programs and operating systems which may be expressed in any language, whether in source or object code and regardless of their medium of fixation.

The duration and level of protection for computer programs shall be consistent with that provided to other literary works.

Limitations on rights expressly permitted to apply to literary works under the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971) shall also be made applicable to computer programs. In addition, owners of a copy of a computer program shall be provided the right to make or authorize the making of a single copy or adaptation of that computer program provided:

(a) that such new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner; or

(b) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

B. *Protection of Integrated Circuit Layout Designs*

Protection shall be granted for any original layout design incorporated in a semiconductor integrated circuit chip, however the layout design might be fixed or encoded.

Protection need not be provided to layout designs that are commonplace in the integrated circuit industry at the time of their creation or to layout designs that are exclusively dictated by the functions of the integrated circuit to which they apply.

Protection may be conditioned on fixation or registration. If protection is conditioned on registration of the layout design, applicants will be given at least two years from first commercial exploitation of the layout design in which to apply for registration. If deposits of identifying material or other material related to the layout design are required, applicants shall not be required to disclose confidential or proprietary information unless it is essential to allow identification of the layout design.

The term of protection shall extend for at least ten years from the date of first commercial exploitation or the date of registration, if required, whichever is earlier.

The owner of the layout designs must be provided the exclusive right to do or to authorize the doing of the following:

(a) reproduce the layout design;

(b) incorporate the layout design in a semiconductor integrated circuit chip; and

(c) import or distribute a semiconductor integrated circuit chip incorporating the layout design including products incorporating such chips.

Limitations on the layout design owner's exclusive rights may be implemented solely through non-exclusive compulsory or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. A government may use semiconductor integrated circuit layout designs for governmental purposes on a non-exclusive basis. Compensation commensurate with the market value for a license of the semiconductor integrated circuit layout design must be provided when the government uses a layout design for government purposes or provides for or orders the issuance of compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

The following acts may be exempted from liability under the law:

(a) reproduction of a layout design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout design that is itself original;

(b) importation and distribution of semiconductor integrated circuit chips, incorporating a protected layout design which were sold by or with the consent of the owner of the layout design; and

(c) importation or distribution of a semiconductor integrated circuit chip incorporating a protected layout design by a person who establishes that he or she did not know, and had no reasonable grounds to believe, that the layout design was protected, provided that such person is liable for reasonable royalties after notice is received.

C. *Patent Protection*

Czechoslovakia will provide a patent term of at least 20 years from filing.

Limitations on the patent owner's exclusive rights may be implemented solely through non-exclusive compulsory licenses or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. The government may use patents for governmental purposes on a non-exclusive basis provided that such use does not substantially prejudice the legitimate economic interests of the patent owner. Compensation commensurate with the market value for a license of the patent must be provided when the government uses a patent or provides for, or orders the issuance of, compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

Czechoslovakia will endeavor to provide transitional protection for products not currently patentable under Czechoslovak law which have the following characteristics:

(a) the product will be patentable in Czechoslovakia upon enactment of the proposed amendments to the patent law;

(b) a patent has been issued for the product in a country which currently grants product patents for that class of inventions; and

(c) the product has not been marketed in Czechoslovakia.

Czechoslovakia will examine the best means to implement such transitional protection. It is Czechoslovakia's intention to provide owners of products meeting these criteria the right to obtain an exclusive registration to produce and market the product in Czechoslovakia if the patent owner applies for Czechoslovak marketing approval within six months of obtaining the first marketing approval in any country and if the product meets Czechoslovak requirements for marketing approval. The term of the exclusive right to market and produce in Czechoslovakia shall be the same as the unexpired term of the patent in the country of original registration.

D. *Protection of Trade Secrets*

Protection will be provided for trade secrets,[1] whether such a trade secret is of a technical or commercial nature, provided that it:

(a) has actual or potential commercial value from not being known to the relevant public;

(b) is not readily accessible in a lawful manner; and

(c) has been subject to reasonable efforts, under the circumstances, by the rightful owner to maintain its secrecy.

The appropriation, disclosure, and use of trade secrets without the consent of the owner shall be unlawful.

Protection of trade secrets shall be available so long as the conditions set forth above are met.

The voluntary licensing of trade secrets shall not be impeded or discouraged by the imposition of excessive or discriminatory conditions on such licenses or conditions which dilute the value of the trade secrets.

If the Government of Czechoslovakia requires that trade secrets be submitted to carry out governmental functions, then that trade secret shall not be used for the commercial or competitive benefit of the government or of any person other than the owner of the trade secret, except with the owner's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given to the trade secret owner.

The Parties may disclose such trade secrets, or require that the owner of the trade secrets disclose them to third parties, only with the owner's consent or to the degree required to carry out necessary government functions; or to protect human health or safety or to protect the environment when the owner is given an opportunity to enter into confidentiality agreements with any non-governmental agency receiving the trade secrets to prevent further disclosure.

I have the further honor to communicate to you my understanding that this letter and your letter of confirmation in reply, constitute an integral part of the Agreement.

Sincerely,

Carla A. Hills.

[1] "Trade secrets" include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the trade secret owner's business and has actual or potential economic value from not being generally known to competitors or in the relevant industry.

Dr. Andrej Barcak

Minister of Foreign Trade

Washington, 12 April 1990

Dear Ambassador Hills:

I have the honor to confirm receipt of your letter which reads as follows:

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(a) that such new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner; or

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Protection may be conditioned on fixation or registration. If protection is conditioned on registration of the layout design, applicants will be given at least two years from first commercial exploitation of the layout design in which to apply for registration. If deposits of identifying material or other material related to the layout design are required, applicants shall not be required to disclose confidential or proprietary information unless it is essential to allow identification of the layout design.

The term of protection shall extend for at least ten years from the date of first commercial exploitation or the date of registration, if required, whichever is earlier.

The owner of the layout designs must be provided the exclusive right to do or to authorize the doing of the following:

(a) reproduce the layout design;

(b) incorporate the layout design in a semiconductor integrated circuit chip; and

(c) import or distribute a semiconductor integrated circuit chip incorporating the layout design including products incorporating such chips.

Limitations on the layout design owner's exclusive rights may be implemented solely through non-exclusive compulsory or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. A government may use semiconductor integrated circuit layout designs for governmental purposes on a non-exclusive basis. Compensation commensurate with the market value for a license of the semiconductor integrated circuit layout design must be provided when the government uses a layout design for government purposes or provides for or orders the issuance of compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

The following acts may be exempted from liability under the law:

(a) reproduction of a layout design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout design that is itself original;

(b) importation and distribution of semiconductor integrated circuit chips, incorporating a protected layout design which were sold by or with the consent of the owner of the layout design; and

(c) importation or distribution of a semiconductor integrated circuit chip incorporating a protected layout design by a person who establishes that he or she did not know, and had no reasonable grounds to believe, that the layout design was protected, provided that such person is liable for reasonable royalties after notice is received.

C. *Patent Protection*

Czechoslovakia will provide a patent term of at least 20 years from filing.

Limitations on the patent owner's exclusive rights may be implemented solely through non-exclusive compulsory licenses or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. The government may use patents for governmental purposes on a non-exclusive basis provided that such use does not substantially prejudice the legitimate economic interests of the patent owner. Compensation commensurate with the market value for a license of the patent must be provided when the government uses a patent or provides for, or orders the issuance of, compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

Czechoslovakia will endeavor to provide transitional protection for products not currently patentable under Czechoslovak law which have the following characteristics:

(a) the product will be patentable in Czechoslovakia upon enactment of the proposed amendments to the patent law;

(b) a patent has been issued for the product in a country which currently grants product patents for that class of inventions; and

(c) the product has not been marketed in Czechoslovakia.

Czechoslovakia will examine the best means to implement such transitional protection. It is Czechoslovakia's intention to provide owners of products meeting these criteria the right to obtain an exclusive registration to produce and market the product in Czechoslovakia if the patent owner applies for Czechoslovak marketing approval within six months of obtaining the first marketing approval in any country and if the product meets Czechoslovak requirements for marketing approval. The term of the exclusive right to market

and produce in Czechoslovakia shall be the same as the unexpired term of the patent in the country of original registration.

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Protection will be provided for trade secrets,[1] whether such a trade secret is of a technical or commercial nature, provided that it:

(a) has actual or potential commercial value from not being known to the relevant public;

(b) is not readily accessible in a lawful manner; and

(c) has been subject to reasonable efforts, under the circumstances, by the rightful owner to maintain its secrecy.

The appropriation, disclosure, and use of trade secrets without the consent of the owner shall be unlawful.

Protection of trade secrets shall be available so long as the conditions set forth above are met.

The voluntary licensing of trade secrets shall not be impeded or discouraged by the imposition of excessive or discriminatory conditions on such licenses or conditions which dilute the value of the trade secrets.

If the Government of Czechoslovakia requires that trade secrets be submitted to carry out governmental functions, then that trade secret shall not be used for the commercial or competitive benefit of the government or of any person other than the owner of the trade secret, except with the owner's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given to the trade secret owner.

The Parties may disclose such trade secrets, or require that the owner of the trade secrets disclose them to third parties, only with the owner's consent or to the degree required to carry out necessary government functions; or to protect human health or safety or to protect the environment when the owner is given an opportunity to enter into confidentiality agreements with any non-governmental agency receiving the trade secrets to prevent further disclosure.

I have the honor to confirm that my Government shares this understanding, and that this exchange of letters constitutes an integral part of the Trade Agreement mentioned above.

Sincerely,

Andrej Barcak

Minister of Foreign Trade

Government of the Czechoslovak Federative Republic

[1] "Trade secrets" include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the trade secret owner's business and has actual or potential economic value from not being generally known to competitors or in the relevant industry.

UNITED STATES DEPARTMENT OF COMMERCE

United States Travel and Tourism Administration

Washington, D.C. 20230

Dear Mr. Minister:

I have the honor to confirm the following understanding reached between the delegations of Czechoslovak Federative Republic and the United States of America in the course of negotiating the Agreement on Trade Relations, signed this day.

The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and Czechoslovakia.

The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory. Permission to open official tourism promotion offices or field offices, shall be as agreed upon by the Parties, and subject to the applicable laws, regulations and policies of the host country. Official tourism offices opened by either Party shall be operated on a noncommercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

Private and governmentally-owned commercial tourism enterprises shall be treated as private commercial enterprises fully subject to all applicable laws and regulations of the host country.

Each Party shall ensure, within the scope of its legal authority, that any company owned, controlled or administered by that Party, or any joint venture therewith, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party in a fair and equitable manner and on a most-favored-nation basis.

Subject to applicable laws, nationals and companies of the United States and of Czechoslovakia shall be permitted to act as agents for United States, Czechoslovak, and third country providers of tourism and travel-related services in the territory of either Party.

Nothing in this letter or in the Agreement on Trade Relations shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

The Parties agree to give consideration to the negotiation of a separate agreement on tourism and travel-related services.

I have the honor to propose that this understanding be treated as an integral part of the Agreement on Trade Relations. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Wylie H. Whisonant, Jr.

Deputy Under Secretary

Dr. Andrej Barcak

Minister of Foreign Trade

Washington, 12 April 1990

Dear Mr. Whisonant:

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Each Party shall ensure, within the scope of its legal authority, that any company owned, controlled or administered by that Party, or any joint venture therewith, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party in a fair and equitable manner and on a most-favored-nation basis.

Subject to applicable laws, nationals and companies of the United States and of Czechoslovakia shall be permitted to act as agents for United States, Czechoslovak, and third country providers of tourism and travel-related services in the territory of either Party.

Nothing in this letter or in the Agreement on Trade Relations shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

The Parties agree to give consideration to the negotiation of a separate agreement on tourism and travel-related services.

I have the honor of confirming that my Government shares this understanding, and that this exchange of letters constitutes an integral part of that Agreement.

Sincerely,

Andrej Barcak

Minister of Foreign Trade

Government of the Czechoslovak Federative Republic

TERMS OF REFERENCE: THE U.S.-CZECHOSLOVAK JOINT COMMERCIAL COMMISSION

The U.S.-Czechoslovak Joint Commercial Commission is established by the governments of Czechoslovakia and the United States to facilitate the development of commercial relations and related economic matters between the Czechoslovak Federative Republic and the United States of America.

The Commission shall work and formulate recommendations on the basis of mutual consent.

The Commission shall:

—Review operation of The U.S.-Czechoslovak Trade Agreement and make recommendations for achieving its objectives in order to obtain the maximum benefit therefrom;

—Exchange information about amendments and developments in the regulations of the United States and Czechoslovakia affecting trade under the U.S.-Czechoslovak Trade Agreement;

—Consider measures which would develop and diversify trade and commercial cooperation. These measures shall include but are not limited to encouraging and supporting contracts and cooperation between businesses of both countries, and examining ways to improve the development of direct contacts between firms established in the United States and Czechoslovakia;

—Monitor and exchange views on U.S.-Czechoslovak commercial relations; identify and where possible recommend solutions to issues of interest to both Parties;

—Provide a forum for exchanging information in areas of commercial, industrial and technological cooperation, where they have an impact on trade and cooperation; and

—Consider other steps which could be taken to facilitate and encourage the growth and development of commercial relations and related economic matters between the two countries.

The Commission shall be comprised of two sections, a U.S. section and a Czechoslovak section. Each section shall be composed of a chairman and other government officials as designated by each Party.

The Commission shall meet as often as mutually agreed by the Parties, alternatively in Washington and Prague.

Appropriate senior-level officials from the U.S. Department of Commerce and the Czechoslovak Ministry for Foreign Trade shall act as co-chairmen of the Commission, and shall head their respective sections; each section of the Commission shall include other government officials as designated by each Party.

The Commission shall work on the basis of mutual agreement. The Commission shall, as necessary, adopt rules of procedure and work programs. The Commission may, as mutually agreed, establish joint working groups to consider specific matters. These working groups shall function in accordance with the instructions of the Commission.

Each section shall have an Executive Secretary, named by the chairman, who shall arrange the work of the respective section of the Commission. The Executive Secretary shall arrange the work of the respective section of the Commission, and perform the tasks of an organizational or administrative nature connected with the meetings of the Commission.

The Executive Secretaries shall communicate with each other as necessary to arrange Commission meetings and to perform other functions. Agendas for Commission meetings shall be agreed upon not later than one month prior to the meeting. The meeting shall consider matters included in this agenda, as

well as further matters which may be added to the agenda by mutual agreement.

The Commission and its working groups shall work on the basis of mutual agreement. Agreed minutes signed by the co-chairmen of the Commission shall be kept for each meeting of the Commission, and shall be made public by each side. The parties shall advise each other whenever measures and recommendations agreed to are subject to subsequent approval of their government.

Any document mutually agreed upon during the work of the Commission shall be in the English and Czech languages, each language being equally authentic.

Expenses incidental to the meetings of the Commission and any working group established by the Commission shall be borne by the host country. Travel expenses from one country to the other, as well as living and other personal expenses of representatives participating in meetings of the Commission and any working group of the Commission shall be borne by the party which sends such persons to represent it.

Each section may invite advisers and experts to participate at any meeting of the Commission or its working groups, except that such participation must be mutually agreed by the parties in advance of the meeting.

The terms of reference of the Commission may be amended by mutual agreement of the parties at any meeting or during the periods between the meetings of the Commission.

Done in Washington, D.C., April 12, 1990, in two copies, in the English and Czech languages, both texts being equally authentic.

FOR THE CZECHOSLOVAK FEDERATIVE REPUBLIC

Andrej Barcak

Minister for Foreign Trade

FOR THE UNITED STATES OF AMERICA

J. Michael Farren

Under Secretary for International Trade

U.S. Department of Commerce

[FR Doc. 90-21324
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federal register

Wednesday
September 12, 1990

Part V

Department of the Interior

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the final regulation for the curation of federally-owned and administered archeological collections. It would establish procedures for Federal agencies to provide both information on the disposition of collections and copies of certain associated records to pertinent State officials and other appropriate parties. In addition, it would establish procedures for Federal agencies to discard, under certain circumstances, particular material remains that may be in collections subject to this part.

DATES: Comments on this proposed rule must be received on or before December 11, 1990.

ADDRESSES: Comments on this proposed rule should be addressed to Douglas H. Scovill, Acting Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, or delivered to Room 4127C, 1100 L Street, NW., Washington, DC, between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Francis P. McManamon (Chief, Archeological Assistance Division) at 202-343-4101 or FTS 343-4101.

SUPPLEMENTARY INFORMATION:

Background

The final regulation 36 CFR part 79 establishes definitions, standards, procedures, and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered in conjunction with Federal projects and programs under certain Federal statutes. This proposed rule would amend § 79.5 and would add § 79.12 to part 79.

Section 79.5 sets forth the responsibilities of Federal Agency Officials for the long-term management and preservation of collections subject to part 79. Paragraph (c) of § 79.5 requires that certain administrative records on the disposition of collections subject to part 79 be maintained by the Federal Agency Official. It does not, however, call for the Federal Agency Official to provide information on the disposition of collections or copies of certain associated records to pertinent non-Federal parties. For example, State and Tribal Historic Preservation Officers should be provided with information about prehistoric and historic resources on lands within their respective States and reservations. In addition, researchers and scholars should have access to information about prehistoric and historic resources that they are studying. This proposed rule would address this matter by adding paragraph (d) to § 79.5.

Proposed paragraph 79.5(d)(1) would call for information on the disposition of collections and copies of certain associated records to be provided to pertinent State officials and other appropriate parties. Proposed paragraph 79.5(d)(2) would identify those State officials and other parties who should receive the information and records. Proposed paragraph 79.5(d)(3) would call for the Federal Agency Official to submit copies of final reports of federally-authorized surveys, excavations and other studies to a national depository of reports. Proposed paragraph 79.5(d)(4) would call for certain information on final reports of such studies to be submitted for inclusion in the National Archeological Database, which is administered by the National Park Service.

As currently codified, 36 CFR part 79 does not provide a mechanism for Federal agencies to discard material remains, which may be in collections subject to the part, that have limited or no scientific value. By adding a new § 79.12 to part 79, this proposed rule would establish procedures to discard, under certain circumstances, particular material remains.

Proposed paragraph 79.12(a) would provide Federal agencies with the discretion to discard, under certain circumstances, particular material remains. Proposed paragraph 79.12(b) would set forth four categories of material remains that would be appropriate for a Federal Agency Official to discard.[1] The categories are specific and narrowly defined to ensure that material remains that are archeological or historic in nature are not inadvertently or casually discarded.

Proposed paragraphs 79.12(c) and (d) would establish procedures by which the Federal Agency Official would make and document determinations to discard particular material remains. Proposed paragraph 79.12(e) would provide a means for the Federal agency's determination to discard material remains to be reviewed by the Department of the Interior's Departmental Consulting Archeologist. Proposed paragraphs 79.12(f) through (i) would set forth the requirements under which material remains to be discarded would be disposed of. Proposed paragraph 79.12(j) would call for pertinent records on the collection to be amended to indicate any deaccessions and discards, and for certain documentation on the discard to be retained.

Preparation of the Rulemaking

The final regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections appears as 90-21348 published elsewhere in this issue of the **Federal Register**. The regulation had been published for public comment as a proposed rule on August 28, 1987 (52 FR 32740). A number of commenters recommended the changes being proposed in this amendment. Because the procedures being proposed were not contained in the proposed rule that was published in 1987, they are being issued hereinbelow as a proposed rule to allow for public review and comment.

The National Park Service seeks comments and suggestions from Federal, State and local Government agencies, Indian tribes, repositories, professional organizataions, other interested organizations, groups, and the public on these proposed amendments to 36 CFR part 79.

Authorship

The author of this rulemaking is Michele C. Aubry (Archeologist and Progam Analyst) in the office of the Departmental Consulting Archeologist, National Park Service, Washington, DC.

Compliance with Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a

[1] The procedure that would be established under this proposed amendment is not intended to address the complex issue of repatriation of human remains and funerary objects. A procedure for Federal agencies to release particular human skeletal remains and objects excavated or removed from public lands into the custody of the pertinent Indian tribe or other Native American group is being drafted by the Departments of the Interior, Agriculture, Defense, and the Tennessee Valley Authority as part of an amendment to uniform regulations (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229) implementing the Archaeological Resources Protection Act (16 U.S.C. 470*aa-mm*). Nevertheless, human skeletal remains and objects that would meet any of the four categories of material remains set forth in proposed paragraph 79.12(b) may be appropriate for discard under 36 CFR part 79.

significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Compliance with the Paperwork Reduction Act

This rules does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with the National Environmental Policy Act

Federal agencies that conduct or authorize archeological investigations are required by law to maintain and preserve the resulting collections of artifacts, specimens and associated records. Issuance of this document will result in more consistent, systematic and professional care of those collections. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). In addition, the National Park Service has determined that this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 79

Archeology, Archives and records, Historic preservation, Indians-lands, Museums, Public lands.

Dated: June 25, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set out in the preamble, the Department of the Interior proposes to amend title 36, chapter I of the Code of Federal Regulations by amending part 79 as follows:

PART 79—CURATION OF FEDERALLY-OWNED AND ADMINISTERED ARCHEOLOGICAL COLLECTIONS

1. The authority citation for part 79 continues to read as follows:

Authority: 16 U.S.C. 470*aa-mm*, 16 U.S.C. 470 *et seq.*

2. Section 79.5 is amended by adding paragraph (d) to read as follows:

§ 79.5 Management and preservation of collections.

* * * * *

(d) *Distribution of records to other parties.* (1) For each new collection and, upon request, for each preexisting collection, the Federal Agency Official shall ensure that pertinent State officials and other parties, as appropriate, are provided with:

(i) The name and location of the repository where the collection is deposited;

(ii) Copies of any site forms and maps of the prehistoric or historic resource that was surveyed, excavated or otherwise studied;

(iii) Copies of any final reports of the survey, excavation or other study;

(iv) Upon request, copies of other appropriate records; and

(v) In accordance with such terms and conditions as are developed pursuant to § 79.10(d) of this part, instructions for restricting access to site forms, maps, final reports, and other records being provided that contain information relating to the nature, location or character of a prehistoric or historic resource.

(2) Pertinent State officials and other parties, as appropriate, would include but not be limited to the:

(i) State Historic Preservation Officer;

(ii) State Archeologist;

(iii) When the State Historic Preservation Officer does not maintain the State's official site files, the official who represents the State agency or institution that does maintain such files;

(iv) When the collection is from a site on Indian lands, the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands;

(v) When the collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the Tribal Official and the Tribal Historic Preservation Officer, if any, of the pertinent Indian tribe; and

(vi) When the collection is from a site on State, local or privately owned lands, the owner.

(3) For each new collection, after removing any information on the nature, location or character of a prehistoric or historic resource to which access is restricted pursuant to § 79.10(d) of this part, the Federal Agency Official shall submit copies of any final reports of the survey, excavation or other study to the:

(i) National Technical Information Service;

(ii) Defense Technical Information Service;

(iii) Library of Congress; or

(iv) Other appropriate national depository for reports.

(4) For each new collection and, upon request, for each preexisting collection, the Federal Agency Official shall ensure that the information required by the National Archeological Database, administered by the National Park Service, about final reports of the survey, excavation or other study is submitted for inclusion in the National Archeological Database. Procedures for submitting the required information are available from the Archeological Assistance Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

* * * * *

3. A new § 79.12 is added to read as follows:

§ 79.12 Procedures to discard material remains.

(a) Under certain circumstances, the Federal Agency Official may determine that particular material remains in a collection subject to this part need not be preserved and maintained in a repository, and may be discarded.

(b) It may be appropriate to discard material remains when:

(1) The material remains are not archeological or historic in nature and were inadvertently collected and included in the collection;

(2) Material remains subject to the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*) are not or are no longer of archeological interest, as determined under uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229;

(3) The material remains, while archeological or historic in nature, consist of large quantities of bulky, highly redundant, non-diagnostic items that have limited potential for further research; or

(4) The material remains, while archeological or historic in nature, are a hazard to human health or safety.

(c) Prior to making a determination that it may be appropriate to discard particular material remains, the Federal Agency Official shall ensure that the following procedures are followed:

(1) The material remains are professionally evaluated and documented, consistent with the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983), for the purpose of determining whether they meet the requirements of paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section;

(2) The Federal agency's principal archeologist or, in the absence of an agency principal archeologist, the Department of the Interior's Departmental Consulting Archeologist, shall review the documentation prepared under paragraph (c)(1) of this

section and make recommendations to the Federal Agency Official concerning the adequacy of the evaluation and documentation and the appropriateness of the proposed discard;

(3) When the material remains are from a site on Indian lands, the Indian landowner and the Indian tribe having jurisdiction over the lands are notified of the proposed discard;

(4) When the material remains are from a site on State, local or privately owned lands, the owner is notified of the proposed discard;

(5) When the material remains are from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the pertinent Indian tribe or other group is provided with an opportunity to comment on the proposed discard;

(6) The State Historic Preservation Officer and other appropriate State and Federal agencies, universities, museums, scientific and educational institutions, and interested persons are provided with an opportunity to comment on the proposed discard; and

(7) When the collection is included in or eligible for inclusion in the National Register of Historic Places, the discard action is reviewed to determine whether it is subject to section 106 of the National Historic Preservation Act (16 U.S.C. 470*f*).

(d) The Federal Agency Official shall fully document determinations to discard material remains and any terms and conditions to be applied. The Federal Agency Official's determinations shall be based upon:

(1) A professional evaluation of the material remains, conducted pursuant to paragraph (c)(1) of this section, that the remains meet the requirements of paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section;

(2) The recommendations of the agency's principal archeologist or the Department of the Interior's Departmental Consulting Archeologist, as appropriate, provided in accordance with paragraph (c)(2) of this section;

(3) The consent of any non-Federal owners; and

(4) Any consultations performed pursuant to paragraphs (c)(5), (c)(6) and (c)(7) of this section.

(e) Any interested person may request in writing that the Department of the Interior's Departmental Consulting Archeologist review any Federal agency's determination to discard material remains. Two copies of the request should be sent to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. The request should document why the requester disagrees with the Federal Agency Official's determination or the terms and conditions to be applied. The Departmental Consulting Archeologist shall review the request and, if appropriate, the Federal Agency Official's determination and its supporting documentation. Based on this review and within 60 days of the receipt of the request, the Departmental Consulting Archeologist shall prepare and transmit to the head of the Federal agency a final professional recommendation for further consideration.

(f) Federally-owned material remains to be discarded shall be disposed of in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), any agency specific regulations on the management of Federal property, any agency specific statutes and regulations on the management of museum collections, and such terms and conditions as may be appropriate.

(g) Indian-owned material remains to be discarded shall be disposed of in accordance with such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(h) State, local, and privately owned material remains to be discarded shall be disposed of in accordance with such terms and conditions as may be requested by the owner.

(i) When the material remains to be discarded consist of bulky, highly redundant, non-diagnostic items, a sample shall be retained that is representative of the remains and large enough to allow for destructive analysis in the future without substantially depleting the sample.

(j) The accession, catalog and artifact inventory list records for the collection from which the material remains are discarded shall be amended to indicate which material remains are deaccessioned and discarded, the basis for the discard, and the manner in which they are discarded. The documentation prepared under paragraphs (c) and (d) of this section shall be retained as a part of the collection.

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